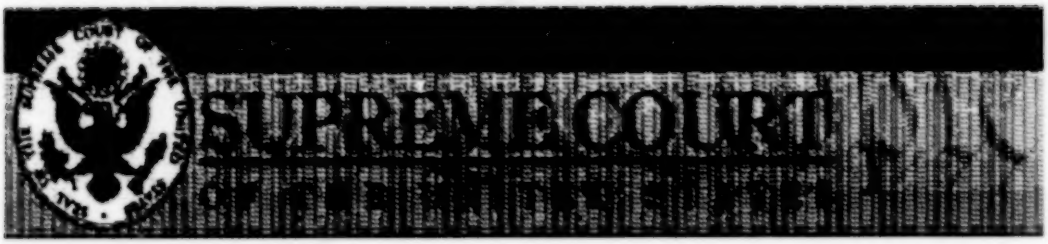

No. 14-844

Title:	Antoine Bruce, Petitioner
	v.
	Charles E. Samuels, Jr., et al.
Docketed:	January 16, 2015
Lower Ct:	United States Court of Appeals for the District of Columbia Circuit
Case Nos.:	(10-5059)
Decision Date:	August 5, 2014
Rehearing Denied:	October 22, 2014

Questions Presented

—Date—	——Proceedings and Orders——————————
Jan 16 2015	Petition for a writ of certiorari filed. (Response due February 17, 2015)
Feb 12 2015	Order extending time to file response to petition to and including March 19, 2015.
Mar 13 2015	Order further extending time to file response to petition to and including April 20, 2015.
Apr 14 2015	Order further extending time to file response to petition to and including May 11, 2015.
May 11 2015	Brief of respondents Charles E. Samuels, Jr., et al. filed.
May 15 2015	Letter dated May 13, 2015, from counsel for petitioner received waiving the 14- day waiting period pursuant to Rule 15.5.
May 19 2015	DISTRIBUTED for Conference of June 4, 2015.
Jun 8 2015	DISTRIBUTED for Conference of June 11, 2015.
Jun 15 2015	Petition GRANTED.
Jul 14 2015	The time to file the joint appendix and petitioner's brief on the merits is extended to and including August 11, 2015.
Jul 14 2015	The time to file respondents' brief on the merits is extended to and including September 22, 2015.
Aug 11 2015	Joint appendix filed. (Statement of costs filed.)
Aug 11 2015	Brief of petitioner Antoine Bruce filed.
Aug 18 2015	Brief amici curiae of Southern Poverty Law Center, et al. filed.
Sep 9 2015	SET FOR ARGUMENT on Wednesday, November 4, 2015
Sep 10 2015	Record requested from the U.S.C.A. D.C. Circuit.
Sep 22 2015	Brief of respondents Charles E. Samuels, Jr., et al. filed.
Sep 29 2015	CIRCULATED
Sep 29 2015	Brief amici curiae of Michigan and 19 Other States filed. (Distributed)
Sep 30 2015	The record from the U.S.C.A. District of Columbia Circuit is electronic and located on PACER.
Oct 22 2015	Reply of petitioner Antoine Bruce filed. (Distributed)
Nov 4 2015	Argued. For petitioner: Anthony F. Shelley, Washington, D. C. For respondents: Nicole A. Saharsky, Assistant to the Solicitor General, Department of Justice, Washington, D. C.

Supreme Court, U.S.
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No. 14-844

IN THE
Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., HARLEY G. LAPPIN, JOYCE K. CONLEY, RAYMOND E. HOLT, DELBERT G. SAVERS, RUFUS WILLIAMS, JOHN RATHMAN, LISA AUSTIN, LEE H. GREEN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(2), prisoners proceeding *in forma pauperis* must each month pay 20% of their existing income towards a federal case or appeal's filing fee, until satisfying the entire filing fee. The Fifth, Seventh, Eighth, and Tenth Circuits and the D.C. Circuit here have held that, where a prisoner has more than one federal case or appeal for which a filing fee is or remains owed, § 1915(b)(2) requires the prisoner to make a separate monthly 20% installment payment for each such filing fee, meaning that 40% of the prisoner's income would be taken in total per month if the prisoner still has filing fees for two matters outstanding, 60% if he has three filing fees outstanding, and even 100% if he has five filing fees outstanding. The Second and Fourth Circuits, in contrast, have held that § 1915(b)(2) caps the total to be taken from a prisoner at 20% per month irrespective of how many filing fees that prisoner might still owe, with the prisoner paying off each filing fee sequentially in the order in which it was incurred. The question presented is:

When a prisoner files more than one case or appeal in the federal courts *in forma pauperis*, does § 1915(b)(2) cap the monthly exaction of filing fees at 20% of the prisoner's monthly income regardless of the number of cases or appeals for which he owes filing fees?

ADDITIONAL PARTIES TO THE PROCEEDING BELOW

Appellants

Jeremy Brown (Federal Prisoner: 31123-074)

Andrew Wesley Hobbs (Federal Prisoner: 30723-077)

John Samuel Leigh (Federal Prisoner: 03857-087)

Jeremy Pinson (Federal Prisoner: 16267-064)

Movant

Mikeal Glenn Stine (Federal Prisoner: 55436-098)

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The August 5, 2014 opinion of the United States Court of Appeals for the District of Columbia Circuit is published at 761 F.3d 1 (D.C. Cir. 2014). This opinion is reproduced in the appendix ("Pet. App.") to this petition at 1a-18a. The D.C. Circuit's orders denying rehearing and rehearing en banc are unpublished and are reproduced in the appendix to this petition at 23a-25a.

JURISDICTION

Petitioner Antoine Bruce seeks review of the August 5, 2014 decision of the court of appeals denying his request to stay the collection of filing fees. A timely petition for rehearing and rehearing en banc was filed, which the court of appeals denied on October 22, 2014. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915(b)(1) provides as follows:

> Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
>
> (A) the average monthly deposits to the prisoner's account; or

> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

In addition, 28 U.S.C. § 1915(b)(2) provides as follows:

> After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

STATEMENT OF THE CASE

This case presents an important question of statutory interpretation that affects potentially every prisoner who files more than one civil suit or appeal *in forma pauperis* ("IFP") in the federal courts, along with the prison officials having custody of such prisoners and the court clerks administering fees in IFP prisoner cases. The fee-collection provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b), requires an IFP prisoner to pay an initial partial filing fee and then to make monthly installment payments of 20% of the prisoner's income until the fee is paid in full. An open and recurring question is how those monthly installment payments are to be collected when an IFP prisoner owes filing fees for more than one case. Does § 1915(b)(2) permit a prisoner to make a single 20% payment each month, with the prisoner

paying off each filing fee sequentially in the order in which it was incurred (the "per prisoner" approach)? Or does the statute require the prisoner to make a separate 20% payment each month for each case or appeal filed, with the prisoner simultaneously making payments toward all of his existing obligations (the "per case" approach)?

Petitioner, a federal prisoner proceeding IFP, moved to stay collection of the filing fee he owed in the case below until he had completed paying the fee he owed in another case. In a lengthy decision, the D.C. Circuit denied Petitioner's motion, adopted the per-case approach, and ordered Petitioner to make separate 20% payments each month for every case in which he owes filing fees. The D.C. Circuit's decision comports with decisions by the Fifth, Seventh, Eighth, and Tenth Circuits. The Second and Fourth Circuits have reached a contrary view. In this series of conflicting circuit decisions, the respective courts of appeals have, at this late juncture, analyzed nearly every possible angle to the statutory construction question regarding § 1915(b)(2), but they are in deep division. In light of the mature circuit conflict, and given the overwhelming practical difficulties created for prisoners, prison officials, and courts (and their clerks) by the lack of a uniform national rule regarding the collection of installment payments when an IFP prisoner has more than one outstanding filing fee, the Court should grant the Petition.

In the proceedings below, a federal prisoner named Jeremy Pinson filed suit in the United States District Court for the District of Columbia, challenging the conditions of his confinement at the Federal Correc-

tional Institution in Talladega, Alabama. Pet. App. 2a. The district court held that venue was improper, and transferred the case to the Northern District of Alabama. *Id.*

Pinson then filed a mandamus petition in the D.C. Circuit, seeking to vacate the district court's transfer order and seeking to compel the district court clerk to accept certain filings that Pinson claimed the clerk had rejected. *Id.* Petitioner Antoine Bruce, also a federal prisoner, joined the mandamus petition, as did prisoners Jeremy Brown, Andrew Wesley Hobbs, and John Samuel Leigh. *Id.* at 4a-5a. They all moved to proceed IFP. *Id.* Separately, Bruce and Pinson moved to stay the D.C. Circuit's collection of filing fees, arguing that 28 U.S.C. § 1915(b) entitled them to defer the payment of fees to the D.C. Circuit until they had completed their payment of fees owed in other cases. Pet. App. 2a, 4a-5a.

The D.C. Circuit ultimately denied Pinson's motion to proceed IFP, but provided him time to pay his portion of the shared filing fee for the mandamus petition up front if he chose to proceed with the mandamus petition. *Id.* at 4a-8a. The court of appeals granted IFP status to Bruce, Brown, Hobbs, and Leigh, *id.* at 4a, 8a, but held that they lacked standing to challenge the district court's transfer of the underlying case to the Northern District of Alabama and the district court clerk's refusal to docket a filing. *Id.* at 9a-10a.

The D.C. Circuit then addressed the manner in which filing fees should be collected from Bruce (an issue that was moot as to Pinson in light of the court of appeals's conclusion that he could not proceed IFP). *Id.* at 11a-18a. It adopted the per-case approach.

The court focused on the "'overall statutory scheme'" of § 1915, and determined that every provision of § 1915, including the 20% installment provision, "appl[ies] to *each action or appeal* filed by a prisoner." Pet. App. 14a (emphasis in original, citation omitted). The court stated that it reached this conclusion by reading subsections (b)(1) and (b)(2) together.

Subsection (b)(1) provides that the prisoner must pay an "initial partial filing fee," calculated according to a formula provided in the statute. 28 U.S.C. § 1915(b)(1). The court held that the plain text of this subsection "calls for assessment of the initial partial filing fee *each time* a prisoner 'brings a civil action or files an appeal.'" Pet. App. 14a-15a (quoting 28 U.S.C. § 1915(b)(1)) (emphasis in original).

Subsection (b)(2) then states that "[a]fter payment of the initial partial filing fee," the prisoner must make monthly payments at a rate of 20% of his income from the preceding month. 28 U.S.C. § 1915(b)(2). The court reasoned that "[b]ecause the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem." Pet. App. 15a. And "[g]iven that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Id.*

The court found that other subsections of § 1915 also supported the per-case approach. *Id.* at 15a-16a. The court pointed to: subsection (a)(2) (which requires prisoners to submit trust fund account statements to the court); subsection (e)(2) (which requires the court

to dismiss defective cases); and subsection (f)(1) (which allows the court to award costs). *Id.* Those subsections all refer to the prisoner-litigant's "civil action or appeal," "case," or "suit or action" – each time using the singular, as opposed to plural, form. Because those requirements apply on a per-case basis, the court concluded that it would be "incongruous" to interpret subsection (b)(2)'s 20% provision "to dictate the amount a prisoner may be required to pay each month for all his cases *in toto*." Pet. App. 16a.[1]

The D.C. Circuit concluded its analysis by finding that "the per-case approach comports with the PLRA's basic object," which was to "'deter prisoners from filing frivolous lawsuits.'" Pet. App. 17a (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011)). Because the per-prisoner approach purportedly "would diminish the deterrent effect of the PLRA," the court found the per-case approach more consonant with the PLRA's purpose. *Id.*

---

[1] Though the D.C. Circuit sought to focus on the statute's actual text, it missed the most pertinent sentence. In the key sentence, § 1915(b)(2) provides that "[t]he agency having custody of the prisoner shall forward payments from the prisoner's account to the *clerk* [singular] of the *court* [also singular] each time the amount in the account exceeds $10 until the filing *fees* [plural] are paid." The use of the singular words "clerk" and "court" indicates that a single clerk's office is to receive monthly payments even when there are numerous "*fees*" outstanding, a position consistent with the per-prisoner methodology of paying one court at a time (but sequentially) when there are fees outstanding from several courts. Other courts adopting the per-case approach have likewise missed the mixing of singulars and plurals in the relevant sentence when parsing § 1915(b)'s language. *See, e.g., Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002); *see infra* pp. 8-9.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Deepens an Already Mature Conflict Among the Courts of Appeals

Seven of the courts of appeals have addressed § 1915(b)(2), and each has adopted one of two competing interpretations of the provision. Five circuits, including the D.C. Circuit in the case below, have adopted the per-case approach, while two others have adopted the per-prisoner approach. This circuit split is both deep and mature. Indeed, the D.C. Circuit acknowledged that its ruling would add to an already well-developed split among the courts of appeals, *see* Pet. App. 12a-13a, the contours of which have also been described in other circuit decisions. *See Torres v. O'Quinn*, 612 F.3d 237, 242 (4th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180 (5th Cir. 2002). Because these decisions (particularly now with the addition of the D.C. Circuit's analysis) exhaustively address the statutory construction questions under § 1915(b)(2), the circuit dispute is fully ripe for this Court's intervention, and the Petition therefore should be granted.

1. In addition to the D.C. Circuit's decision here, the Fifth, Seventh, Eighth, and Tenth Circuits have adopted the per-case approach.

a. Chronologically, the first appellate court to address the issue was the Seventh Circuit in *Newlin v. Helman*, 123 F.3d 429 (7th Cir. 1997), *overruled on other grounds by Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000), *and Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). The court in *Newlin* concluded that § 1915(b)(2) is ambiguous, in that it "does not tell us

whether the 20 percent-of-income payment is per case or per prisoner." *Id.* at 436. But the court nonetheless rejected the per-prisoner approach on the grounds that if prisoners were allowed to pay filing fees sequentially, then they would be able to "file multiple suits for the price of one, postponing payment of the fees for later-filed suits until after the end of imprisonment (and likely avoiding them altogether)." *Id.* The court declared that the PLRA was intended to require prisoners to "bear some marginal cost for each legal activity"; if prisoners were not required to pay fees soon after filing their lawsuits, those fees would not be collected at all. *Id.*

b. The Eighth Circuit followed suit the next year in *Lefkowitz v. Citi-Equity Grp., Inc.*, 146 F.3d 609 (8th Cir. 1998). Citing to *Newlin*, the court held that "[b]ecause the PLRA fee provisions were designed to require prisoners to bear financial responsibility for each action they take, the twenty-percent rule should be applied per case." *Id.* at 612.

c. Several years later, the Fifth Circuit also adopted the per-case approach in *Atchison v. Collins*, 288 F.3d 177 (5th Cir. 2002). In that case, the Fifth Circuit found the statutory language to be unambiguous. *Id.* at 180. In § 1915(b)(1), the statute provides that "[t]he court" in which a prisoner brings a civil action shall collect an initial partial filing fee, and in § 1915(b)(2), the statute mandates that 20% of the prisoner's monthly income then be paid to "the clerk of the court." The panel concluded that "[i]f 'the court' in § 1915(b)(1) is the court in which the instant action has been filed, irrespective of past suits, then 'the court' in § 1915(b)(2) presumably refers to the same

court." *Id.* at 180-81. It held that when "these two provisions are read together as part of a coherent scheme," the "'per case' interpretation is mandated." *Id.* at 181. Otherwise, the court held, the per-prisoner interpretation would lead to the "absurd result[]" that "the clerk of the court" would refer to more than one person when a prisoner files suit in more than one court – and then "[w]hich clerk collects the fee?" *Id.* Finally, the panel dismissed any concerns that the per-case approach raised constitutional questions. Because "[t]he Supreme Court has held that indigent persons have no constitutional right to proceed *in forma pauperis*," and prisoners are guaranteed the basic necessities of life, the Fifth Circuit concluded that the per-case scheme does not deprive prisoners of any constitutionally protected right. *Id.* (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996)).

d. The next appellate court to adopt the per-case approach was the Tenth Circuit. In *Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 830-31 (10th Cir. 2010), the court parsed § 1915(b) and quoted extensively from what it called the "thoughtful discussion" of the 20% issue in *Hendon v. Ramsey*, 478 F. Supp. 2d 1214 (S.D. Cal. 2007). The court adopted *Hendon*'s reasoning that because other requirements imposed upon prisoners by § 1915 are clearly meant to apply on a per-case basis, the 20% provision should be read the same way. Specifically, the court pointed to § 1915(a)(2) and (b)(1), which, respectively, require prisoner litigants to submit a certified copy of their trust fund account and pay an initial partial filing fee in each case they file. The court quoted *Hendon* for its conclusion that "'the overall statutory scheme is written in a manner that requires prisoners to complete

procedures and pay fees on a per case basis, rather than a per prisoner basis.'" 374 F. App'x at 830-31 (quoting *Hendon*, 478 F. Supp. 2d at 1219). Particularly persuasive to the court was that § 1915(b)(1), which imposes an initial-filing-fee requirement in every case, is intended to be read in conjunction with § 1915(b)(2), which contains the 20% payment requirement. *Id.* at 831.

The court also found that the per-case approach was the better interpretation because it furthered the PLRA's "overarching purpose of imposing the installment-payment obligations uniquely on prisoners" in order to "reduce frivolous prisoner litigation by making all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by liability for filing fees." *Id.* (internal quotation marks and citation omitted). The court found that the meaning of § 1915(b)(2) was "fully intelligible" when the statute is viewed as a whole. *Id.* Last, the court rejected any contention that the per-case approach presented constitutional problems, because even if 100% of a prisoner's monthly income were withheld, the prisoner would still be guaranteed access to basic necessities, including materials needed for court correspondence. *Id.* at 832.

2. On the opposite side of the split, both the Second and Fourth Circuits have adopted the per-prisoner approach.

a. In *Whitfield v. Scully*, 241 F.3d 264 (2d Cir. 2001), the Second Circuit recognized that either the per-case or the per-prisoner approach could plausibly be adopted, and held that the statutory language "fail[ed] to provide a definitive answer." *Id.* at 276. However, "keeping in mind the Supreme Court's ad-

monition that § 1915 should be applied "so as not to deprive litigants of the "last dollar they have,"" *id.* at 275 (quoting *In re Epps*, 888 F.2d 954, 967 (2d Cir. 1989), quoting *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)), the Second Circuit opined that the statute nonetheless pointed toward the per-prisoner approach, because the "references to an initial partial payment of 'any court fees,' 28 U.S.C. § 1915(b)(1), and to the imposition of a single 'judgment' for costs at the end of a suit, *id.* § 1915(f)(1), imply that multiple fees and costs should each be subject to a uniform ceiling." *Id.* at 276.

The court noted that the per-case interpretation could result in 100% of a prisoner's income being withheld. *Id.* ("In the present case, for example, Whitfield's filing fees for the initial complaint and two appeals, plus the two awards of costs against him, could create five encumbrances subject to recoupment at a total rate of 100 percent."). The court concluded that "this result arguably could pose a serious constitutional quandary as to whether an unreasonable burden had been placed on the prisoner's right of meaningful access to the courts." *Id.* at 277. Though the court did not decide whether such a result would actually be unconstitutional, it did employ the well-known canon of statutory interpretation that courts should "'avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.'" *Id.* (quoting *Gomez v. United States*, 490 U.S. 858, 864 (1989)). The court found that this principle required it to adopt the per-prisoner interpretation, because that interpretation was a reasonable one. *Id.*

The Second Circuit explicitly rejected the Seventh Circuit's contrary reasoning in *Newlin*. The Second Circuit did not share *Newlin*'s concern that prisoner litigants would postpone payment until their release and thus avoid payment altogether. To the contrary, the Second Circuit noted that (at least under its own precedent), prisoners would not be absolved of liability upon release. *Id.* at 277. The court concluded that while the sequential approach would cause some delay in payments and might lessen the incentive for prisoners not to litigate, "that alternative is far preferable to adopting a construction of the statute that could render it unconstitutional." *Id.*

b. In *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010), the Fourth Circuit provided the most thorough analysis of the issue to that point. In a 2-1 panel decision, the court found the per-prisoner approach to be "the most plausible reading of the statute, in light of Congress' intent as reflected in legislative history and the structure of the statute, and in the face of a looming constitutional question posed by the alternative interpretation." *Id.* at 242. In its discussion, the court rejected the arguments raised by the circuits that had adopted the per-case approach.

In particular, the court found the Fifth Circuit's concern in *Atchison* – that the per-prisoner interpretation could result in the "clerk of the court" being more than one person—to be "misplaced." *Id.* at 243. It concluded that the PLRA requires the agency housing the prisoner to collect 20% of his income and forward it to the court, and in the event that multiple courts are owed money, those debts should be paid sequentially, in the order in which the prisoner filed suit. *Id.* The

court also found *Atchison*'s "casual dismissal" of the serious constitutional questions implicated by the per-case interpretation to be "deeply troubling." *Id.* The court emphasized that, under well-settled Supreme Court precedent, indigent plaintiffs must be allowed to proceed *in forma pauperis* when seeking to vindicate certain fundamental rights. As one example, the court noted that *M.L.B. v. S.L.J.* – the very case cited by the Fifth Circuit for the proposition that indigent litigants have no constitutional right to proceed IFP – in fact held that an indigent litigant must be permitted cost-free appellate review of the termination of parental rights. 612 F.3d at 243 (citing *M.L.B.*, 519 U.S. at 129).

From there, the Fourth Circuit rejected the Seventh Circuit's finding in *Newlin* that the per-case approach should be adopted because the alternative would purportedly allow prisoners to put off paying their fees indefinitely, if ever. The court found that this conclusion rested on "highly debatable assumptions," including the belief that most prisoner-litigants serve sufficiently short sentences that they will be released from prison before fully paying the fees they owe, and "that Congress is powerless to collect unpaid filing fees from prisoners after they are released." *Id.* at 244.

Turning to the language of § 1915, the Fourth Circuit agreed with the Seventh Circuit that as to whether the per-case or per-prisoner approach is correct, the statute is "not ambiguous; rather, it is simply *silent*." *Id.* at 244 (emphasis in original). The court explained that it must therefore "determine what Congress would have done had it thought about the problem," ultimately concluding that the most natural

reading of the statute supported the per-prisoner approach. *Id.* at 245. Specifically, the court zeroed in on § 1915(b)(1)'s requirement that the court collect "any court fees" according to the prescribed formula. The court explained that the word "any" should be given its most natural meaning, which is "any and all." *Id.* at 245. In light of that definition, the 20% formula applies to all fees owed by the prisoner, such that "§§ 1915(b)(1) and (b)(2) forbid deducting more than twenty percent of the inmate's income for monthly payments of *all* the court fees from *all* suits in the aggregate." *Id.* at 246 (emphasis in original).

The court also rejected the position later adopted by the D.C. Circuit in this case, in which the D.C. Circuit found that because subsection (b)(1) triggers the operation of subsection (b)(2), the monthly installment payments mandated by (b)(2) are necessarily collected on a per-case basis. The Fourth Circuit recognized that "deeming § 1915(b)(2) 'simply' to 'latch on' to § 1915(b)(1) . . begs the question presented." *Id.* at 249. The former approach "bespeaks the kind of mechanical statutory interpretation that can lead a court to stray from the full achievement of congressional goals" and reflects "a conclusion unsupported by genuine analysis." *Id.* at 248, 249. In fact, the Fourth Circuit held that the two subsections "are materially distinct in purpose and effect," such that there is no reason to read (b)(2) as operating in the same manner as (b)(1). *Id.* at 249. It concluded:

> there is absolutely nothing inherent in Congress' decision to require, in § (b)(1), an exaction of 20% of the inmate's 'average monthly balance' . . . as a 'partial payment' of a

> filing fee at the commencement of each case or appeal, which compels the conclusion that the subsequent [20%] 'monthly payments,' required by § (b)(2) . . must be withheld without regard to the number of cases and appeals pending at the same time.

Id. at 250.

The court also determined the per-prisoner approach to be perfectly in line with the overall purpose of the PLRA, in that prisoners would be deterred from filing frivolous lawsuits as effectively as ever. As an initial matter, the per-prisoner approach still requires all prisoner-litigants eventually to pay their filing fees in full – "it is merely a question of timing." *Id.* at 246. Moreover, frequent filers of meritless lawsuits would continue to be blocked from court by virtue of the "three strikes" provision in 28 U.S.C. § 1915(g), which the court later referred to as "Congress' preferred method for barring access to federal district court to mischievous inmates intent on engaging in 'recreational litigation.'" *Id.* at 246, 250.

The court found support for the per-prisoner approach in the "admittedly meager" legislative history of the PLRA. *Id.* at 246. It viewed several senators' floor statements as persuasive, insofar as the filing fee requirements were not meant to impose a crushing burden on prisoners, which they would if (as under the per-case interpretation) 100% of the prisoners' incomes could be depleted.[2] One senator referred to the filing

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[2] For example, "an inmate could file three lawsuits in district court, all of which present colorable and plausible, but ultimately losing, claims." *Torres*, 612 F.3d at 247. "If the district court

fee requirement as a "'modest monetary outlay,'" and explained that "'[t]he filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter multiple filings.'" *Id.* at 247 (quoting statement of Sen. Kyl, 141 Cong. Rec. S7526, (daily ed. May 25, 1995)) (alternation in original). Other senators made clear that the fees were not intended to be punitive or to deter meritorious lawsuits (as they likely would under the per-case approach). One senator was quoted as stating, "'If somebody has a good case, a prisoner, let him file it.'" *Id.* (quoting statement of Sen. Reid, 142 Cong. Rec. 5,118 (1996)). Another said, "'I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.'" *Id.* (quoting statement of Sen. Hatch, 141 Cong. Rec. 27,042 (1995)). In light of the full legislative history, the Fourth Circuit found that "Congress could not possibly have intended" the result reached by the per-case circuits. *Id.*

Finally, the court echoed the Second Circuit's constitutional avoidance argument by noting that the per-case approach "could present a constitutional problem of access to courts for prisoners." *Id.* at 247-48. Some prisoners, the court noted, have "struck out" under § 1915(g), such that they are required to pay their entire

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grants summary judgment against the inmate in each case, the inmate would be foreclosed from pursuing what could be a meritorious appeal in the third case because the three district court filing fees (60%) coupled with the filing fees for the appeals in the first two cases (40%) would exhaust his trust fund account and he could not pay the appellate filing fee, and therefore could not appeal, the adverse summary judgment in the third case." *Id.*

filing fees up front. For such prisoners who are also subject to simultaneous withdrawal of filing fees from previous suits, the per-case approach could leave them with no assets, and therefore no ability to file any lawsuits, save those that meet § 1915(g)'s exception for prisoners who are in "imminent danger of serious physical injury." But as the court noted, many prisoners may seek to vindicate violations of fundamental, constitutionally protected rights, even though those violations do not place them in imminent danger of physical harm. *Id.* at 248. For example, a three-strikes prisoner whose assets are subject to 100% garnishment, and whose right to free exercise of religion had been abridged, would have no recourse in the federal courts. *See id.* n.12. The troubling constitutional implications of such circumstances, the court suggested, were yet another reason to reject the per-case interpretation.

3. Within the circuits that have not yet reached this issue at the appellate level, district court opinions indicate that the split will only continue to grow. In the Sixth and Ninth Circuits, district courts have adopted the per-case approach, while district courts in the First and Third Circuits have adopted the per-prisoner approach. *Compare Hendon v. Ramsey*, 478 F. Supp. 2d 1214, 1219 (S.D. Cal. 2007) (adopting per-case approach); *Samonte v. Frank*, 517 F Supp. 2d 1238, 1243 (D. Haw. 2007) (same); *Lyon v. Kentucky State Penitentiary*, Nos. 5:02CV–P53–R, 5:03CV-P10-R, 2005 WL 2044955, at *1 (W.D. Ky. Aug. 23, 2005) (same); *Suggs v. Caballero*, No. 06-13931, 2007 WL 541909, at *1 (E.D. Mich. Feb. 16, 2007) (same); *with Lafauci v. Cunningham*, 139 F. Supp. 2d 144, 147 (D. Mass. 2001) (adopting per-prisoner approach); *Fortune*

v. Patterson, No. 04–377, 2009 WL 3166274, at *4 (W.D. Pa. Sept. 28, 2009) (same).

4. Petitioner's case is an ideal vehicle for addressing this recurring, already exhaustively-debated issue. The facts below are straightforward and would allow this Court to resolve cleanly a deep split among the circuits. The D.C. Circuit directly addressed the question in the proceedings below, and the case carries with it no complicating corollary issues. And despite the number of circuit court decisions on the question presented, we are unaware of any previous petitions for certiorari that have raised it. This case, in which petitioner is represented by counsel, provides the Court with the opportunity to resolve the conflict on how § 1915(b)(2) applies. The question is one that is sure to continue arising, and the appellate courts that have not yet faced it are likely to do so soon. *See, e.g.*, *Grenning v. Miller-Stout*, 739 F.3d 1235, 1242 (9th Cir. 2014) (acknowledging the need to resolve whether the per-case or per-prisoner approach is correct, but directing the district court to consider the issue in the first instance).[3]

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[3] The Court has granted certiorari this Term in a case concerning how the PLRA's three-strikes provision should be interpreted. *See Coleman-Bey v. Tollefson*, No. 13-1333. Argument in that case is scheduled for February 23, 2015.

B. The Current Lack of a Nationally Uniform Rule Creates Insuperable Practical Difficulties for Prisoners, Prison Officials, and Courts

The current circuit conflict creates considerable practical confusion regarding the collection of fees imposed by § 1915(b)(2). The difficulties are particularly perplexing where a prisoner has filed suit in both per-case and per-prisoner circuits. For instance, consider a situation in which an indigent prisoner has filed three suits. Assume that he files his first suit in the Second Circuit and begins paying off his filing fee at a rate of 20% of his income. He is later transferred to a prison within the Fourth Circuit, where he files another case. Because the Fourth Circuit follows the per-prisoner approach, the new prison still collects just 20% of his income, all of which continues to be paid toward the initial Second Circuit case. The Fourth Circuit court waits its turn and will begin receiving payments once the first case is paid off.

Then imagine that the prisoner files a third lawsuit within the D.C. Circuit.[4] Because the D.C. Circuit follows the per-case approach, assume that the court demands immediate payment at 20% of the prisoner's income. Here, numerous questions arise. Should the prison begin withholding 40% of the prisoner's income, and pay the courts in the Second and D.C. Circuits while the Fourth Circuit court continues to wait? If the prisoner continues to file lawsuits in per-case circuits, can those courts also "cut in line" ahead of the

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[4] Though still imprisoned within the Fourth Circuit, the prisoner could file suit in a D.C. federal court if, for example, he were suing a D.C.-based federal government agency or official.

Fourth Circuit? Because the prison sits in the Fourth Circuit, should the prison refuse to send a payment to the clerk seeking the payment in the D.C. Circuit, given that the per-prisoner approach governs in the Fourth Circuit? These dizzying administrative questions, which have no clear answers, demonstrate the level of confusion federal courts and prison administrators encounter and will continue to encounter – potentially on a daily basis – if this Court does not resolve the question presented and put in place a uniform national rule.

Practical problems on how fee collection should be carried out still remain even if one were to assume that the per-case approach is correct. Consider the facts of *Torres*. Torres filed an initial suit, and the prison subsequently garnished 20% of his income for that suit's fees. After Torres filed a second lawsuit, the prison began deducting an additional 20% of his income – as would happen in a per-case circuit. But upon receiving those funds, the district court, without any guidance from § 1915, could only guess how the money should be applied. Should 20% of Torres' income be applied to the first case, and 20% to the second? Or should all 40% be applied to the first case until that fee is paid off? As the Fourth Circuit pointed out, the district court opted for the second method.

The Court should also grant the Petition because the circuit split, if left unresolved, could incentivize forum shopping among prisoner-plaintiffs. This conclusion rests on two premises: (1) prisoners enjoy some leeway in where they file lawsuits; and (2) prisoners will naturally avoid filing suit in per-case circuits and be drawn toward per-prisoner circuits. Support for the

first premise can be found in 28 U.S.C. § 1391, which governs venue in federal court cases. Specifically, § 1391(e)(1) provides that actions against federal officers or employees, acting in their official capacities, can properly be brought in any judicial district where the defendant resides, where the incident took place, or where the plaintiff resides. Because prisoners frequently file cases against prison and other government officials concerning prison conditions, they will sometimes have the option to file suit either in the district where the prison is situated, or in their "home" district. A prisoner's place of residence for purposes of venue is *not* the location of the prison, but, rather, where that prisoner resided before being incarcerated. *See Urban Indus., Inc. v. Thevis*, 670 F.2d 981, 986 (11th Cir. 1982) (prisoner's Georgia residency did not change when he was incarcerated for several years in an Indiana federal prison); *Cohen v. United States*, 297 F.2d 760, 774 (9th Cir. 1962) ("One does not change his residence to the prison by virtue of being incarcerated there."); *Bontkowski v. United States*, No. 04-cv-552, 2005 U.S. Dist. LEXIS 35140, at *5 (M.D. Fla. Oct. 25, 2005) ("[A] prisoner's place of incarceration is not his residence for purposes of venue.").

***

In sum, the D.C. Circuit's decision deepens a widely recognized conflict on the question presented. Similarly situated IFP prisoners are subject to vastly different treatment with regard to payment for access to the courts, depending solely on the circuit in which they file suit. And absent a nationally uniform rule, the administration of fee collection presents significant practical problems, with courts (and their clerks) and

APPENDIX

prisons subject to conflicting policies that they must simultaneously implement and with courts also facing the specter of forum shopping.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2015

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 14, 2013

Decided [and Filed] August 5, 2014

No. 10-5059

JEREMY PINSON, ET AL.,
APPELLANTS

v.

CHARLES E. SAMUELS, JR., ET AL.,
APPELLEES

On Petition for Writ of Mandamus
(No. 1:10-cv-00092)

Dawn E. Murphy-Johnson, appointed by the court, argued the cause as *amicus curiae* for appellants. With her on the briefs was *Anthony F. Shelley*, appointed by the court.

Wynne P. Kelly, Assistant U.S. Attorney, argued the cause for appellees. With him on the brief were *Ronald C. Machen, Jr.*, U.S. Attorney, and *R. Craig Lawrence*, Assistant U.S. Attorney.

Before: GARLAND, *Chief Judge*, and HENDERSON and SRINIVASAN, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* SRINIVASAN.

SRINIVASAN, *Circuit Judge*: Jeremy Pinson is a federal prisoner serving a twenty-year sentence for threatening the President, knowingly and willfully making a false statement to a United States Marshal, and mailing threatening communications. Pinson has made frequent use of the federal courts during his time in prison, having filed more than 100 civil actions and appeals across the nation. In this case, filed in the District of Columbia, Pinson challenges the conditions of his confinement at the Federal Correctional Institution in Talladega, Alabama. The district court determined that venue in the District of Columbia was improper and ordered the action transferred to the Northern District of Alabama. Pinson then filed a mandamus petition in this court seeking to vacate the district court's transfer order, and also to compel the district court clerk to accept certain rejected filings. Four fellow prisoners join his petition, and all of them seek to proceed *in forma pauperis* in this court. Pinson and one other petitioner also moved to stay collection of the filing fees, arguing that the federal *in forma pauperis* statute entitles them to defer the payment of fees in this case until they complete their payment of fees owed in other cases.

Because Pinson has run afoul of the Prison Litigation Reform Act's three-strikes provision and has failed to demonstrate that he qualifies for the imminent danger exception, we deny his motion to proceed *in forma pauperis*. We also hold that the remaining petitioners lack standing to challenge either the transfer order or the clerk's rejection of the filings. Finally, we deny the motion to stay the collection of filing fees pending the payment of fees in other cases.

I.

In December 2009, Pinson filed a complaint in the United States District Court for the District of Columbia, naming several Bureau of Prisons (BOP) officials as defendants. At the time, he was incarcerated in the Special Management Unit (SMU) of the Federal Correctional Institution in Talladega. SMUs house gang-affiliated and other disruptive inmates who present unique security concerns. *See* BOP Program Statement 5217.01 (Nov. 19, 2008). Pinson's complaint alleged that SMUs are "unconstitutionally violent and dangerous" in violation of the Eighth Amendment. App. 9. He claimed that his designation to an SMU placed him "in imminent danger" because BOP officials failed to identify him as a former associate of a gang and to separate him from members of rival gangs. App. 8-9. He further alleged that the defendants knew that he was a homosexual who thus would "face[] a substantial risk of harm" if designated to an SMU. App. 8. Pinson moved to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C. § 1915.

In January 2010, the district court issued an order transferring Pinson's case to the Northern District of Alabama. The court determined that venue did not properly lie in the District of Columbia "[b]ecause none of the alleged events forming the basis of the complaint occurred in the District." Transfer Order, ECF No. 3, App. 21. The court stated that Pinson's IFP application would be decided by the transferee court. *Id.*

In March 2010, after unsuccessfully moving for reconsideration of the transfer order, Pinson filed a notice of appeal. This court construed the notice as

a petition for a writ of mandamus, and ordered Pinson to pay the $450 docketing fee or to file a motion to proceed IFP. Pinson moved to proceed IFP, as well as to stay any collection of filing fees until he completed payment of filing fees owed in other cases he had brought.

Pinson, joined by several fellow SMU inmates, then submitted a "Motion for Joinder of Appellees and for Appointment of Counsel." According to that motion, the other inmates had attempted to join Pinson's lawsuit by filing a "Motion for Joinder" in the district court. The prisoners claimed to have submitted the Motion for Joinder twice, once prior to the transfer of the case and once as an accompaniment to Pinson's motion for reconsideration of the transfer order. The prisoners argued that the district court clerk exceeded his authority by allegedly returning the motion unfiled on both occasions. They also submitted an amended notice of appeal clarifying their intention to challenge both the transfer order and the clerk's rejection of the Motion for Joinder. This court construed the amended notice of appeal to be a supplement to the mandamus petition.

Over the next several years, the parties engaged in an extended back-and-forth concerning Pinson's eligibility for IFP status and his motion to stay the collection of filing fees. A motions panel of this court dismissed all the prisoners attempting to join the case (for failure to prosecute) except Andrew Hobbs and Jeremy Brown, both of whom were granted IFP status. The panel also appointed an amicus curiae to present arguments in favor of the petitioners. Another motions panel later reinstated two of the previously dismissed prisoners, Antoine

Bruce and John Leigh, as petitioners, and ordered them to file completed motions for leave to proceed IFP. Bruce also joined Pinson's motion to stay the collection of filing fees.

II.

We first consider Pinson's request to proceed IFP before this Court, which we deny. The federal IFP statute, codified at 28 U.S.C. § 1915, generally authorizes courts to waive ordinary filing fees for an indigent litigant seeking to bring a lawsuit. *See* 28 U.S.C. § 1915(a)(1). In 1996, prompted by widespread concerns that inmates had been flooding the courts with meritless claims, Congress enacted the Prison Litigation Reform Act (PLRA). *See Chandler v. D.C. Dep't of Corr.*, 145 F.3d 1355, 1356 (D.C. Cir. 1998). The PLRA substantially amended 28 U.S.C. § 1915 with regard to prisoner-litigants. Unlike other litigants, prisoners accorded IFP status can no longer avoid payment of filing fees altogether. They instead are permitted to pay in monthly installments rather than in one, up-front payment. 28 U.S.C. § 1915(b).

Additionally, prisoners who have incurred three or more "strikes" face a potential bar against proceeding IFP:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section [authorizing IFP proceedings] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim

> upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C § 1915(g). Because it is undisputed that Pinson has accumulated at least three strikes, the statute prohibits him from proceeding IFP unless he falls within the imminent danger exception.

In assessing imminent danger, we examine the conditions faced by Pinson at the time he initiated his action. Both sides urge us to broaden the inquiry to encompass later developments. Amicus points to the August 2010 murder of another SMU inmate (who was an attempted co-petitioner), as well as an alleged January 2011 incident in which Pinson was nearly stabbed. The government, for its part, contends that Pinson's relocation to an Administrative Maximum facility in Florence, Colorado, renders moot his claim of imminent danger concerning his confinement in the Talladega SMU. We reject the invitation to take into account those subsequent events.

Our decision in *Mitchell v. Federal Bureau of Prisons*, 587 F.3d 415 (D.C. Cir. 2009), precludes consideration of post-complaint developments when assessing the applicability of the imminent danger exception. We explained there that "we assess the alleged danger at the time [the prisoner] filed his complaint and thus look only to the documents attesting to the facts at that time, namely his complaint and the accompanying motion for IFP status." *Id.* at 420. That approach squares with the statute's temporal reference point: the initial act of "bring[ing]" a lawsuit. 28 U.S.C. § 1915(g); *see Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th

Cir. 2007). Section 1915(g) directs attention to whether the prisoner "is under imminent danger of serious physical injury" when he "bring[s]" his action, not to whether he later in fact suffers (or does not suffer) a serious physical injury.

The provision's status as a mere "screening device" reinforces that understanding. *Andrews*, 493 F.3d at 1050, 1055. Otherwise, the inquiry into imminent dangerousness could require examining myriad post-filing developments and adjustments of confinement conditions that may transpire during the course of a lawsuit (and that often attend an inmate's imprisonment). Restricting the inquiry to the allegations in a prisoner's complaint better coheres with § 1915(g)'s "limited office." *Id.* at 1055.

Turning, then, to the allegations in Pinson's complaint (and his accompanying motion for IFP status), his claim of imminent danger closely resembles one we rejected in *Mitchell*. Mitchell's complaint alleged that "even though BOP knew he had testified for the government, it illegally transferred him to USP Florence, a prison known for murders and assaults on anyone who has been known as a snitch, and where he was nearly murdered." 587 F.3d at 420-21 (ellipsis in original) (internal quotation marks omitted). This court found that Mitchell had "failed to allege that the danger he faces is imminent." *Id.* at 421. With respect to the alleged attack against Mitchell, the court noted that he had "wait[ed] until seventeen months after the attack to file his complaint." *Id.* With respect to his general allegation that the facility was known to present dangers to inmates who testify for the government, the court concluded that "neither the

complaint nor his IFP motion alleges any ongoing threat." *Id.*

Pinson's allegations of imminent danger are materially indistinguishable from those found inadequate in *Mitchell*. Pinson contends that, as a homosexual and former gang member, his designation to the Talladega SMU alongside members of rival gangs placed him in imminent danger of death or serious bodily injury. Like Mitchell, Pinson's claim rests on the BOP's decision to designate him to a particular facility notwithstanding its reputation as a dangerous place for inmates possessing certain characteristics—here, as a rival gang-member and homosexual, and in *Mitchell*, as a government "snitch." The *Mitchell* court found such contentions insufficient to satisfy the imminent danger exception, even though Mitchell, unlike Pinson, further alleged that he had already been attacked by the time he filed his complaint. We see no ground for reaching a different conclusion here.

Because Pinson fails to qualify for the imminent danger exception to the three-strikes rule, we deny his motion for IFP status. If he wishes to proceed, he has thirty days from the date of this opinion to pay the filing fee up front. *See Mitchell*, 587 F.3d at 422. If he elects not to proceed, no fees will be collected. *See Smith v. District of Columbia*, 182 F.3d 25, 30 (D.C. Cir. 1999). Pinson's co-petitioners, by contrast, have not accumulated three strikes. This court already granted IFP status to Hobbs and Brown, and we now grant IFP status to Bruce and Leigh. We therefore proceed to consider the mandamus petition with regard to those four petitioners.

III.

The mandamus petition challenges both the district court clerk's refusal to docket a "Motion for Joinder" and the district court's transfer of the case to the Northern District of Alabama. We conclude that the remaining petitioners lack standing to raise either of those claims.

To establish Article III standing, a plaintiff must demonstrate that "(1) [he] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)). Because the elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Here, moreover, petitioners seek mandamus relief, a "drastic" remedy "invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 402 (1976).

Petitioners contend that the district court clerk twice refused to file a "Motion for Joinder" which they had submitted in an attempt to join the action below. While petitioners aver in their pleading that they were injured as a result of the

clerk's alleged actions, they provide no evidence that the Motion for Joinder in fact existed, let alone that it was submitted to the district court. The record contains no reference to any such motion despite petitioners' contention that it was twice returned to Pinson stamped "received." Nor do petitioners give any explanation for the absence of any reference to the motion in the record. In those circumstances, petitioners fail to support their claim of injury "with the manner and degree of evidence required" for mandamus relief. *Lujan*, 504 U.S. at 561; *see Sierra Club v. EPA*, 292 F.3d 895, 898-902 (D.C. Cir. 2002).

Petitioners also lack standing to challenge the transfer of Pinson's complaint to the Northern District of Alabama. Petitioners were not parties to the suit below, and "non-parties usually lack standing to challenge venue dispositions." *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 116 (2d Cir. 1992); *see also United States v. U.S. Dist. Court, S. Dist. of Tex.*, 506 F.2d 383, 384 (5th Cir. 1974) (nonparty lacked standing to compel transfer of venue via mandamus). We have no occasion to assess whether our conclusion might be different if petitioners had substantiated their allegations that they attempted to join the suit below and had demonstrated that the district court improperly denied their request. *Cf. Alt. Research & Dev. Found. v. Veneman*, 262 F.3d 406, 411 (D.C. Cir. 2001) (per curiam) (suggesting that non-party might have standing to appeal a stipulated dismissal where intervention is improperly denied).

Amicus argues that petitioners can establish standing based on their general interest in the lawsuit, citing *Aurelius Capital Partners v. Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009). In

Aurelius Capital, the Second Circuit determined that a nonparty with an "interest affected by the district court's judgment" had standing to appeal the judgment. *Id.* at 127-29. But the nonparty in *Aurelius Capital* had a direct property interest in certain funds deemed subject to attachment and execution by the lower court's order. *Id.* at 128. Even if that sort of direct property interest would justify non-party standing, petitioners' generalized "interest in the lawsuit challenging SMU procedures" does not suffice. Amicus Br. 38.

IV.

The remaining issue concerns the manner in which filing fees should be collected from petitioner Bruce. Under the federal IFP statute as amended by the PLRA, prisoners granted IFP status must make an initial partial payment at the time of filing followed by monthly installments until they pay the full fees. Section 1915(b) sets out the payment structure as follows:

> (b)(1) Notwithstanding subsection (a) [which encompasses non-prisoner litigants], if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
>
> (A) the average monthly deposits to the prisoner's account; or
>
> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the

> filing of the complaint or notice of appeal.
>
> (2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

Pinson moved to stay the collection of the monthly installments due in this case until he fulfilled his obligation to pay the filing fees he owed in other cases. That issue is moot as to Pinson in light of our conclusion that he may not proceed IFP. But we must still decide the issue on behalf of Bruce, who joined Pinson's motion and to whom we have granted IFP status. *See supra* Part II.

The courts of appeals are divided concerning the manner in which the PLRA calls for collection of installment payments from prisoners who simultaneously owe filing fees in multiple cases. The Second and Fourth Circuits interpret § 1915(b) to cap the monthly exaction of fees at twenty percent of a prisoner's monthly income, regardless of the number of cases for which he owes filing fees. *Torres v. O'Quinn*, 612 F.3d 237, 252 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264, 277 (2d Cir. 2001). Under that "per prisoner" cap, a prisoner would satisfy his obligations sequentially, first fully satisfying his obligation for his earliest case before moving on to the next one, at no time making any

payment that would take his cumulative payments for that month beyond an overarching twenty-percent ceiling. By contrast, the Fifth, Seventh, Eighth, and Tenth Circuits have held that § 1915(b) requires a prisoner to make a separate installment payment for *each* filing fee incurred as long as no *individual* payment exceeds twenty percent of his monthly income. *Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F App'x 821, 833 (10th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180 (5th Cir. 2002); *Lefkowitz v. Citi-Equity Grp.*, 146 F.3d 609, 612 (8th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997), *overruled in part on other grounds by Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000), *and Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). Under that "per case" cap, a prisoner simultaneously makes payments towards satisfaction of all of his existing obligations.

This court, contrary to amicus's contention, has yet to choose between those approaches. Amicus errs in reading *Tucker v. Branker*, 142 F.3d 1294 (D.C. Cir. 1998), to have adopted a per prisoner cap. In that case, a North Carolina inmate challenged the PLRA's filing fee requirement, arguing that it denied him "due process of law by forcing him to choose between filing a lawsuit and being able to buy the necessities of life." *Id.* at 1298. In rejecting Tucker's challenge, we observed that "the payment requirement of the PLRA never exacts more than 20% of an indigent prisoner's assets or income." *Id.* That statement did not adopt a per-prisoner cap. *Tucker* involved an as-applied challenge to the PLRA by a prisoner who had filed one suit and thus owed a single twenty-percent installment each month. *Id.* Unsurprisingly, the decision at no point mentions or

contemplates the possibility of multiple simultaneous suits. In context, the observation relied on by amicus is best read to explain that the PLRA's payment structure "never exacts more than 20%" of a prisoner's monthly income for a given suit. *See id.* at 1297-98. And insofar as the statement could be understood to speak to a multiple-suit scenario not presented by the case, it would constitute non-binding dicta. *See Torres*, 612 F.3d at 242 n.3 (referring to the statement from *Tucker* as dicta).

Considering the issue afresh, we conclude that the per-case approach adopted by the Fifth, Seventh, Eighth, and Tenth Circuits is the better understanding of the statute. We begin with the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Taken as a whole, the language and operation of § 1915 indicate that its provisions apply *to each action or appeal* filed by a prisoner; and subsection (b)(2), governing the payment of fees in installments, is no exception. *See Torres*, 612 F.3d at 256 (Niemeyer, J., dissenting).

Subsection (b)(1) of § 1915 addresses the threshold obligation to make an initial partial payment. The provision instructs that, "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall collect, as a partial payment of any court fees required by law, an initial partial filing fee ." 28 U.S.C. § 1915(b)(1). The plain text of the provision calls for assessment of the initial partial filing fee *each time* a

prisoner "brings a civil action or files an appeal." *Id.* Amicus acknowledges that the initial partial filing fee accrues in each case, regardless of the number of suits initiated.

Subsection (b)(2), the immediately ensuing provision, then states that, "*[a]fter payment of the initial partial filing fee*, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income." 28 U.S.C. § 1915(b)(2) (emphasis added). Because the initial partial filing fee imposed in subsection (b)(1) acts as the "triggering condition" for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem. *Torres*, 612 F.3d at 256 (Niemeyer, J., dissenting). Given that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis. *See id.* at 256-57.

The remainder of 28 U.S.C. § 1915 fortifies that per-case understanding. Subsection (a)(2), for example, states that a "prisoner seeking to bring *a civil action or appeal a judgment* in a civil action or proceeding without prepayment of fees or security therefor shall submit a trust fund account statement for the 6-month period immediately preceding the filing of the complaint or the notice of appeal." *Id.* § 1915(a)(2) (emphasis added). Subsection (e)(2) provides that, "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss *the case* at any time if the court determines that" the case is defective. *Id.* § 1915(e)(2) (emphasis added). Subsection (f)(1) allows a court to render judgment for costs "at the conclusion of *the suit or action*." *Id.* §

1915(f)(1) (emphasis added). Interpreting subsection (b)(2) to dictate the amount a prisoner may be required to pay each month for all his cases *in toto* would be incongruous with the rest of the statute.

Amicus responds that § 1915(b)(1) terms the initial partial filing fee payment a "payment of *any* court fees required by law." And because "any" means "any and all," amicus contends, § 1915(b)(2) contemplates taking no more than twenty percent from an inmate's monthly income as payment for "all" court fees owed in all cases. Subsection (b)(1)'s reference to "any" court fees, however, must be read in context: when a prisoner "brings a civil action or files an appeal," he must pay an initial filing fee and monthly installments thereafter as payment of any (and all) court fees *required for that action or appeal*. *Id.* § 1915(b)(1); *see Torres*, 612 F.3d at 258 (Niemeyer, J., dissenting). A straightforward reading of § 1915 thus indicates that both the initial payment required by subsection (b)(1) and the monthly installments required by subsection (b)(2) apply on a per-case basis. Nothing in the statute suggests that a second or third action should be treated any differently than the first.

Amicus urges us to adopt the per-prisoner approach to avoid unconstitutionally constraining a prisoner's access to the courts. But the PLRA's safety-valve provision, § 1915(b)(4), separately serves that function. Under that provision, "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." Moreover, § 1915(b)(2) calls for collection of the required monthly installments only if the amount in

a prisoner's account exceeds $10. As a result, even if 100 percent of a prisoner's income were subject to recoupment for filing fees, the statute assures his ability to initiate an action (provided of course that he faces no bar against proceeding IFP altogether by virtue of having accumulated three strikes). And because prison officials are constitutionally required to afford inmates "'adequate food, clothing, shelter, and medical care,'" our adoption of the per-case approach will not force a prisoner "to choose between the necessities of life and his lawsuit." *Tucker*, 142 F.3d at 1298 (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

Finally, the per-case approach comports with the PLRA's basic object. The "PLRA was designed to deter prisoners from filing frivolous lawsuits, which waste judicial resources and compromise the quality of justice enjoyed by the law-abiding population." *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011) (per curiam) (internal quotation marks omitted). Capping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action. *See Newlin*, 123 F.3d at 436. And although some of the legislative history cited by amicus suggests a disinclination to impose excessive fees on a prisoner for filing a lawsuit, there is no indication of an intention to refrain from imposing the same, non-excessive payment structure each time a prisoner initiates an action. *See, e.g.*, 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of S. Kyl) ("The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings.").

* * * * *

For the foregoing reasons, we deny Pinson's motion to proceed IFP and Bruce's motion to stay collection of fees. We also dismiss the mandamus petition with respect to the allegedly rejected filings. With respect to the challenge to the transfer order, Pinson has thirty days from the issuance of this opinion to pay the filing fee and proceed. The other petitioners, although permitted to proceed IFP, lack standing to challenge the transfer. The clerk's office therefore should collect the applicable fees from each petitioner in accordance with § 1915(b).

So ordered.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2013**
1:10-cv-00092-UNA
Filed On: August 5, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson, and, Srinivasan, Circuit Judges

ORDER

Upon consideration of the petition for writ of mandamus, the briefs of the parties, and the argument by counsel, it is, in accordance with the court's opinion issued herein this date,

ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is

FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is

FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is

FURTHER ORDERED that Jeremy Pinson's motion to proceed in forma pauperis be denied; with respect to the challenge to the transfer order, Pinson has thirty days to pay the filing fee and proceed.

The Clerk is directed to collect the applicable fees from each petitioner, excluding Pinson, in accordance with § 1915(b).

The Clerk is further directed to transmit this order and the orders concerning collection of fees to petitioners by whatever means necessary to ensure receipt. Failure of petitioner Pinson to comply with this order will result in dismissal of the transfer petition for failure to prosecute. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2013**
1:10-cv-00092-UNA
Filed On: August 5, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson, and, Srinivasan, Circuit Judges

ORDER

Upon consideration of the court's order filed August 5, 2014, directing the Clerk to collect the applicable fees from each petitioner other than Pinson in accordance with 28 U.S.C. § 1915(b), and the trust account report and the consent to collection of fees filed by petitioner Antoine Bruce, it is

ORDERED that pursuant to Bruce's consent to collection of fees, Bruce's custodian is directed to pay on Bruce's behalf the initial partial filing fee of $0.64, to be withheld from Bruce's trust fund account. See 28 U.S.C. § 1915(b)(1). The payment must be by check or money order made payable to Clerk, U.S. Court of Appeals for the District of Columbia Circuit.

Petitioner Bruce's custodian also is directed to collect and pay from Bruce's trust account monthly installments of 20 percent of the previous month's income credited to the account, until $112.50, Bruce's share of the $450 docketing fee, has been paid. See 28 U.S.C. § 1915(b)(2). Such payments must be made each month the amount in the account exceeds $10 and must be designated as made in payment of the filing fee for Case No. 10-5059. A copy of this order must accompany each remittance. In the event Bruce is transferred to another institution, the balance due must be collected and paid in installments to the Clerk by the custodian at Bruce's next institution. Bruce's custodian must notify the Clerk, U.S. Court of Appeals for the District of Columbia Circuit in the event Bruce is released from custody.

The Clerk is directed to send a copy of this order to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Ken R. Meadows
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

ORDER

Upon consideration of appellants' petition for rehearing en banc, the brief of amicus curiae in support of the petition, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson and Srinivasan, Circuit Judges

ORDER

Upon consideration of petitioners' petition for rehearing, the brief of amicus curiae in support of the petition, and petitioner Pinson's motion to extend time to pay the filing fee, it is

ORDERED that the motion for extension be denied. It is

FURTHER ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the order filed August 5, 2014, be amended to reflect that Pinson must pay $90.00 (one-fifth of the filing fee) within thirty days of the date of the amended order to be allowed to proceed with his case. If Pinson pays the

$90.00, the remaining petitioners' fees will be reduced from $112.50 each to $90.00 each.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson and Srinivasan, Circuit Judges

AMENDED ORDER

Upon consideration of the petition for writ of mandamus, the briefs of the parties, and the argument by counsel, it is, in accordance with the court's opinion issued herein this date,

ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is

FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is

FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is

FURTHER ORDERED that Pinson's motion to proceed in forma pauperis be denied; with respect

to the challenge to the transfer order, Pinson has thirty days to pay $90.00 (one-fifth of the filing fee), and proceed.

The Clerk is directed to collect the applicable fees from the other petitioners in accordance with § 1915(b).

The Clerk is further directed to transmit this order and the orders concerning collection of fees to petitioners by whatever means necessary to ensure receipt. Failure of petitioner Pinson to comply with this order will result in dismissal of the transfer petition for failure to prosecute. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**
1:10-cv-00092-UNA
Filed On: November 21, 2014

Jeremy Pinson,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

AMENDED ORDER

Upon consideration of the court's order filed August 5, 2014, directing the Clerk to collect the applicable fees from each petitioner other than Pinson in accordance with 28 U.S.C. § 1915(b), and the trust account report and the consent to collection of fees filed by petitioner Antoine Bruce, it is

ORDERED that pursuant to Bruce's consent to collection of fees, Bruce's custodian is directed to pay on Bruce's behalf the initial partial filing fee of $0.64, to be withheld from Bruce's trust fund account. See 28 U.S.C. § 1915(b)(1). The payment must be by check or money order made payable to Clerk, U.S. Court of Appeals for the District of Columbia Circuit.

Petitioner Bruce's custodian also is directed to collect and pay from Bruce's trust account monthly installments of 20 percent of the previous month's income credited to the account, until $90.00, Bruce's share of the $450 docketing fee, has been paid. See

28 U.S.C. § 1915(b)(2). Such payments must be made each month the amount in the account exceeds $10 and must be designated as made in payment of the filing fee for Case No. 10-5059. A copy of this order must accompany each remittance. In the event Bruce is transferred to another institution, the balance due must be collected and paid in installments to the Clerk by the custodian at Bruce's next institution. Bruce's custodian must notify the Clerk, U.S. Court of Appeals for the District of Columbia Circuit in the event Bruce is released from custody.

The Clerk is directed to send a copy of this order to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**
1:10-cv-00092-UNA
Filed On: November 21, 2014

Jeremy Pinson,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

ORDER

In accordance with the court's order filed October 22, 1014, and it appearing that petitioner Jeremy Pinson has paid a filing fee of $90.00, it is

ORDERED that the orders filed August 5, 2014, assessing petitioners Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh a filing fee of $112.50 apiece be amended to reflect that the filing fee assessment for these petitioners is now $90.00 apiece.

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

No. 14-844

IN THE

Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 16, 2015
CERTIORARI GRANTED JUNE 15, 2015

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U.S. District Court
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Relevant Docket Entries for *Pinson v. Lappin*, No. 1:10-cv-00092

Date Filed	#	Docket Text
01/19/2010	1	COMPLAINT against LISA AUSTIN, JOYCE K. CONLEY, LEE H. GREEN, RAYMOND E. HOLT, HARLEY G. LAPPIN, JOHN T. RATHMAN, DELBERT G. SAVERS, RUFUS WILLIAMS (Filing fee $ 0.00) filed by JEREMY PINSON. (Attachments: # 1 Civil Cover Sheet)(ls,) (Entered: 01/21/2010)
01/19/2010	2	MOTION for Leave to Proceed in forma pauperis by JEREMY PINSON (ls,) (Entered: 01/21/2010)
01/19/2010	3	ORDER TRANSFERRING PRO SE CASE to the USDC for the Northern District of Alabama. Whether plaintiff should be permitted to proceed further without prepayment of fees is a determination to be made by the transferee court. Signed by Judge Colleen Kollar-Kotelly on 1/8/2010. (ls,) (Entered: 01/21/2010)

Date Filed	#	Docket Text
03/01/2010	7	NOTICE OF APPEAL as to 3 Order Transferring Pro Se Case, by JEREMY PINSON. Fee Status: No Fee Paid. Parties have been notified. (kb) (Entered: 03/02/2010)
03/15/2010	9	ORDER of USCA as to 7 Notice of Appeal filed by JEREMY PINSON; Ordered that petitioner's Notice of Appeal be construed as a Petition for Writ of Mandamus. It is further Ordered that by April 14, 2010, petitioner submit a memorandum of law and fact in support of the petition. The memorandum may not exceed 30 pages. Failure by petitioner to comply with this order will result in dismissal of the petition for lack of prosecution. Further Ordered, on the court's own motion, that by April 14, 2010, petitioner either pay the $455.00 docketing fee to the Clerk, US Court of Appeals for the District of Columbia Circuit, or file with this Court a Motion for Leave to proceed on appeal in forma pauperis. USCA Case Number 10-5059. (ls,) (Entered: 03/18/2010)

Date Filed	#	Docket Text
08/26/2010	10	Amended NOTICE OF APPEAL re appeal 7 by JEREMY V. PINSON. (kb) (Entered: 09/03/2010)

United States Court of Appeals
for the District of Columbia
Relevant Docket Entries for *Pinson v. Samuels*,
No. 10-5059

Date	Docket Text
03/04/2010	NOTICE OF APPEAL filed [1233276] by Jeremy Pinson seeking review of a decision by the U.S. District Court in 1:10-cv-00092-UNA. Assigned USCA Case Number [10-5059]
03/15/2010	CLERK'S ORDER filed [1234949] construing notice of appeal as a petition for writ of mandamus [1233276-2]; directing response to writ of mandamus [1233276-2]. Petitioner memorandum of law in support of petition for writ of mandamus--due 04/14/2010; directing party to file motion to proceed on appeal in forma pauperis or payment of docketing fee. APPELLANT payment of docketing fee or motion to proceed IFP in district court due 04/14/2010, Failure to respond shall result in dismissal of the case for lack of prosecution; The Clerk is directed to transmit a copy of this order to the district court.; The Clerk is directed to send this order to appellant by whatever means necessary to ensure receipt. [10-

Date	Docket Text
	5059]
03/15/2010	PETITION filed [1234957] by Appellant Jeremy Pinson for writ of mandamus. [Service Date: 03/15/2010 by US mail] Pages: 1-10. [10-5059]
03/29/2010	MOTION filed [1237286] by Jeremy Pinson leave to proceed ifp in the district court (Response to Motion served by mail due on 04/05/2010) [Service Date: 03/23/2010 by US mail] Pages: 1-10. [10-5059]
04/01/2010	PRISONER CONSENT to COLLECTION FILED [1238086] by Jeremy Pinson [10-5059]
04/01/2010	PRISONER TRUST ACCOUNT REPORT FILED [1238087] by Jeremy Pinson [10-5059]
04/05/2010	APPELLANT MEMORANDUM OF LAW AND FACT [1238801] filed by Jeremy Pinson [Service Date: 03/31/2010] Pages: 1-10. [10-5059
04/05/2010	MOTION filed [1238802] by Jeremy Pinson styled as "motion to stay collection of fees" (Response to Motion served by mail due on 04/12/2010) [Service Date: 03/28/2010 by US mail] Pages: 1-10. [10-5059]

Date	Docket Text
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08/13/2010	NOTICE FILED [1260996] by Jeremy Pinson titled "notice regarding appellant/movant Cowley" [Service Date: 08/17/2010] [10-5059]
09/03/2010	NOTICE [1275938] filed from Clerk, District Court of filing amended notice of appeal. [10-5059]
04/08/2011	CLERK'S ORDER filed [1302459] construing the amended notice of appeal [1275938-2] as a supplement to the petition for a writ of mandamus; directing party to file memoranda of law: APPELLANT Memorandum of Law and Fact due 05/09/2011, The memorandum may not exceed fifteen pages. Failure to respond shall result in dismissal of the case for lack of prosecution; The Clerk is directed to send this order to appellant by whatever means necessary to ensure receipt. [10-

Date	Docket Text
	5059]
04/25/2011	APPELLANT MEMORANDUM OF LAW AND FACT [1305087] filed by Jeremy Pinson [Service Date: 04/20/2011] Pages: 1-10. [10-5059]
09/12/2011	RESPONSE IN OPPOSITION FILED [1328930] by Lisa Austin, Joyce K. Conley, Lee H. Green, Raymond E. Holt, Harley G. Lappin, John Rathman, Delbert G. Savers and Rufus Williams to motion for other relief [1238802-2], motion ifp in district court [1237286-2] [Service Date: 09/12/2011 by US Mail] Pages: 16-20. [10-5059] (Kelly, Wynne)
10/11/2011	REPLY FILED [1336063] by Jeremy Pinson to response [1328930-2] [Service Date: 10/04/2011 by US Mail] Pages: 1-10. [10-5059]
12/29/2011	PER CURIAM ORDER filed [1350137] directing that, within thirty days of the date of this order, appellees file a supplemental pleading, not exceeding ten pages, addressing the imminent-danger argument contained in the reply [1336063-2] to the response to the motion for leave to proceed in forma pauperis and motion to stay

Date	Docket Text
	collection of fees. Appellees supplemental pleading due on 01/30/2012. Petitioner/appellant may file a response to the supplemental pleading, not exceeding ten pages, within thirty days after the filing of the supplemental pleading. Petitioner/appellant's response to appellees supplemental pleading due 02/29/2012 Before Judges: Griffith, Kavanaugh and Ginsburg. [10-5059]
01/30/2012	RESPONSE FILED [1355445] by Lisa Austin, Joyce K. Conley, Lee H. Green, Raymond E. Holt, Harley G. Lappin, John Rathman, Delbert G. Savers and Rufus Williams to order [1350137-2] [Service Date: 01/30/2012 by US Mail] Pages: 1-10. [10-5059] (Kelly, Wynne)
02/06/2012	REPLY FILED [1357246] by Jeremy Pinson to response [1355445-2] [Service Date: 02/03/2012 by US Mail] Pages: 1-10. [10-5059]
04/18/2012	PER CURIAM ORDER filed [1369470] directing that within thirty days of the date of this order each individual other than Jeremy Pinson who filed the amended notice of appeal previously

Date	Docket Text
	construed as a supplement to the petition for a writ of mandamus and the "motion for joinder of appellees and for appointment of counsel" (1) inform the court of his current address, (2) file a completed motion for leave to proceed in forma pauperis if he is unable to pay the filing fee, and (3) file a completed prisoner trust account report and consent to collection of fees if he files a motion for leave to proceed in forma pauperis and he was a prisoner when he filed the amended notice of appeal or the "motion for joinder of appellees and for appointment of counsel." Failure to comply with this order will result in dismissal of the case as to the non-complying individual for lack of prosecution. See D.C. Cir. Rule 38. The Clerk is directed to send this order to appellant by whatever means necessary to ensure receipt. Before Judges: Garland, Brown and Kavanaugh. [10-5059]
05/07/2012	PRISONER CONSENT to COLLECTION FILED [1372901] by Jeremy Pinson [10-5059]
05/07/2012	PRISONER TRUST ACCOUNT REPORT FILED [1372902] by

Date	Docket Text
	Jeremy Pinson [10-5059]
08/13/2012	MOTION filed [1390309] by Mikeal Glenn Stine styled as "verified motion requesting to join the appellants/movants" [Service Date: 08/05/2012] Pages: 1-10. [10-5059]
01/29/2013	RELIEF ADDED--PER CURIAM ORDER filed [1417716] denying Mikeal Glenn Stine's motion to join the appellants/movants [1390309-2]; dismissing as moot motion for joinder of appellees as to all of the movants other than Nathaniel Theris [1257217-2]; denying motion for joinder of appellees [1257217-2] and dismissing mandamus petition [1234957-2] as to Nathaniel Theris; granting Andrew Wesley Hobbs's motion for leave to proceed in forma pauperis [1375194-2]; granting Jeremy Brown's motion for leave to proceed in forma pauperis [1375199-2]; referring the petition for writ of mandamus [1234957-2] and Jeremy Pinson's motion for leave to proceed in forma pauperis [1237286-2] to the merits panel to which this case is assigned. Appointing Anthony F. Shelley as amicus curiae to present arguments in favor of petitioners' positions. Setting briefing format:

Date	Docket Text
	petitioners may file a joint opening brief of 14,000 words and a joint reply brief if 7,000 words, or they may file individual opening briefs of 8,000 words for Jeremy Pinson and 3,000 words each for Andrew Wesley Hobbs and Jeremy Brown and individual reply briefs of 4,000 words for Jeremy Pinson and 1,500 words each for Andrew Wesley Hobbs and Jeremy Brown. The Clerk is directed to issue an appropriate briefing schedule and calendar this case for presentation to a merits panel. Before Judges: Garland, Brown and Kavanaugh. [10-5059]--[Edited 01/29/2013 by TAR]
02/19/2013	MOTION filed [1422486] by Mr. Antoine Bruce to reconsider order [1417716-4] (Response to Motion served by mail due on 02/22/2013) [Service Date: 02/08/2013 by US Mail] Pages: 1-10. [10-5059]
06/03/2013	MODIFIED EVENT--INCORRECT PDF WAS ATTACHED--PER CURIAM ORDER filed [1439226] granting motions to reconsider [1422490-2], [1422486-2]; reinstating Antoine Bruce and John Samuel Leigh as petitioners; directing that Bruce and Samuel

Date	Docket Text
	file ifp prisoner submissions: APPELLANT consent to collection form due 07/03/2013. APPELLANT prisoner trust account report due 07/03/2013. APPELLANT payment of docketing fee or motion to proceed IFP in district court due 07/03/2013. Failure to comply with this order will result in dismissal of the mandamus petition as to Bruce and Leigh for lack of prosecution. The completed documents shall be referred to the merits panel to which this case is assigned. Bruce and Leigh have not requested to file briefs, and they may join in the briefs to be filed by the amicus curiae and/or the other petitioners. The Clerk is directed to send this order to appellant by whatever means necessary to ensure receipt. Before Judges: Henderson, Griffith and Kavanaugh. [10-5059]--[Edited 06/04/2013 by TAR]
06/05/2013	AMICUS FOR APPELLANT BRIEF [1439773] filed by Anthony F. Shelley [Service Date: 06/05/2013] Length of Brief: 13,920 words. [10-5059] (Shelley, Anthony)
06/05/2013	APPENDIX [1439774] filed [Volumes: 1] [Service Date: 06/05/2013] [10-5059] (Shelley,

Date	Docket Text
	Anthony)
06/21/2013	NOTICE FILED [1443025] by Mr. Antoine Bruce to join in brief [1439773-2] filed by Amicus Curiae, Shelly Anthony. [Service Date: 06/17/2013] [10-5059]
06/21/2013	MOTION filed [1443026] by Mr. Antoine Bruce to extend time to file IFP and PLRA submissions [Service Date: 06/17/2013] Pages: 1-10. [10-5059]
07/01/2013	MOTION filed [1445299] by Mr. Antoine Bruce to proceed on appeal in forma pauperis [Case Number 10-5059: IFP Pending USCA] [Service Date: 06/27/2013] Pages: 1-10. [10-5059]
07/01/2013	PRISONER CONSENT TO COLLECTION FILED [1445300] by Mr. Antoine Bruce [10-5059]
07/01/2013	PRISONER TRUST ACCOUNT REPORT FILED [1445301] by Mr. Antoine Bruce [10-5059]
07/03/2013	CORRECTED AMICUS FOR APPELLANT BRIEF [1445230] lodged by Anthony F. Shelley [10-5059] --[Edited 07/05/2013 by LMC -- MODIFIED EVENT FROM FILED TO LODGED] (Shelley, Anthony)

Date	Docket Text
08/05/2013	APPELLEE BRIEF [1450100] filed by Lisa Austin, Joyce K. Conley, Lee H. Green, Raymond E. Holt, Harley G. Lappin, John Rathman, Charles E. Samuels, Jr., Delbert G. Savers and Rufus Williams [Service Date: 08/05/2013] Length of Brief: 9,501 words. [10-5059] (Kelly, Wynne)
08/26/2013	MOTION filed [1454198] by Mr. Antoine Bruce and Jeremy Pinson styled as "joint motion for order concerning filing fee". (Response to Motion served by mail due on 09/12/2013) [Service Date: 08/29/2013 by CM/ECF NDA] Pages: 1-10. [10-5059]
08/26/2013	NOTICE FILED [1454202] by Mr. Antoine Bruce to join motion to stay collection of fees [1238802-2] filed by Appellants in 10-5059. [Service Date: 08/29/2013] [10-5059]--[Edited 08/29/2013 by LMC-MODIFIED EVENT]
08/29/2013	CLERK'S ORDER filed [1454213] dismissing as duplicative the motion for order concerning filing fee [1454198-2] and Antoine Bruce's request [1454202-4]. The Clerk is directed to note that Antoine Bruce has joined in the April 5, 2010 motion of Jeremy

Date	Docket Text
	Pinson to stay collection of fees. [10-5059]
09/03/2013	AMICUS FOR APPELLANT REPLY BRIEF [1454665] filed by Anthony F. Shelley [Service Date: 09/03/2013] Length of Brief: 6,993 words. [10-5059] (Shelley, Anthony)
11/14/2013	ORAL ARGUMENT HELD before Judges Garland, Henderson and Srinivasan. [10-5059]
12/10/2013	LETTER FILED [1469654] by Anthony F. Shelley pursuant to FRAP 28j advising of additional authorities [Service Date: 12/10/2013] [10-5059] (Shelley, Anthony)
08/05/2014	[THIS ORDER PARTIALLY AMENDED BY 10/22/2014 ORDER] PER CURIAM ORDER filed [1506088] ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is

Date	Docket Text
	FURTHER ORDERED that Jeremy Pinson's motion to proceed in forma pauperis be denied; with respect to the challenge to the transfer order, Pinson has thirty days to pay the filing fee and proceed. The Clerk is directed to collect the applicable fees from each petitioner, excluding Pinson, in accordance with § 1915(b). [1445299-2], [1445272-2] [Case Number 10-5059: Fee Due] [1238802-2]; Failure to respond shall result in dismissal of the case for lack of prosecution; The Clerk is directed to mail this order to appellant by whatever means necessary to ensure receipt. Before Judges: Garland, Henderson and Srinivasan. [10-5059]--[Edited 10/22/2014 by JMC]
08/05/2014	OPINION filed [1506089] (Pages: 16) for the Court by Judge Srinivasan [10-5059]
08/05/2014	[THIS ORDER PARTIALLY AMENDED BY 11/21/2014 ORDER] PER CURIAM ORDER filed [SEE ORDER FOR FURTHER DETAILS] [1506114] considering order [1506088-5], assessing docketing fee from Antoine Bruce. The Clerk is directed to send a copy of this order

Date	Docket Text
	to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees [10-5059]
08/18/2014	PETITION filed [1508357] by Appellant Jeremy Pinson for rehearing, for rehearing en banc. [Service Date: 08/13/2014 by US Mail] Pages: 1-10. [10-5059]
10/01/2014	AMICUS FOR APPELLANT SUPPLEMENTAL BRIEF [1515044] filed by Anthony F. Shelley [Service Date: 10/01/2014] Length of Brief: 15 pages. [10-5059] (Shelley, Anthony)
10/22/2014	PER CURIAM ORDER filed [1518415] ORDERED that the motion for extension be denied. It is FURTHER ORDERED that the petition for rehearing be denied. It is FURTHER ORDERED that the order filed August 5, 2014, be amended to reflect that Pinson must pay $90.00 (one-fifth of the filing fee) within thirty days of the date of the amended order to be allowed to proceed with his case. If Pinson pays the $90.00, the remaining petitioners' fees will be reduced from $112.50 each to

Date	Docket Text
	$90.00 each. [1511765-3]; [1508357-2]; [1506088-2] Before Judges: Garland, Henderson and Srinivasan. [10-5059]
10/22/2014	AMENDED PER CURIAM ORDER filed [1518416] ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is FURTHER ORDERED that Pinson's motion to proceed in forma pauperis be denied; with respect to the challenge to the transfer order, Pinson has thirty days to pay $90.00 (one-fifth of the filing fee), and proceed. The Clerk is directed to collect the applicable fees from the other petitioners in accordance with § 1915(b). Failure to respond shall result in dismissal of the case for lack of prosecution, this order to appellant by whatever means necessary to ensure receipt. Before Judges: Garland, Henderson and Srinivasan. [10-5059]

Date	Docket Text
10/22/2014	PER CURIAM ORDER, En Banc, filed [1518417] denying petition for rehearing en banc [1508357-3] Before Judges: Garland, Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard and Wilkins. [10-5059]
11/21/2014	CLERK'S ORDER filed [1523748] In accordance with the court's order filed October 22, 2014, and it appearing that petitioner Jeremy Pinson has paid a filing fee of $90.00, it is ORDERED that the orders filed August 5, 2014, assessing petitioners Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh a filing fee of $112.50 apiece be amended to reflect that the filing fee assessment for these petitioners is now $90.00 apiece. [1518417-2] [10-5059]
11/21/2014	AMENDED PER CURIAM ORDER filed [1523752] considering Merits Panel order of docketing fee payment [1506088-2], assessing docketing fee from Antoine Bruce. The Clerk is directed to send a copy of this order to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to

Date	Docket Text
	send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees [10-5059]
01/16/2015	LETTER filed [1533701] by the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 01/16/2015 as No. 14-844. [10-5059]
06/15/2015	LETTER received [1557611] from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 14-844: The petition for writ of certiorari was granted on 06/15/2015. [10-5059]

[Transcribed from handwritten document.]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

[date-stamp:]
FILED
JAN 19 2010
Clerk, U.S. District and
Bankruptcy Courts

Jeremy V. Pinson,
#16267-064
Plaintiff,
F.C.I.
POB 1000
Talladega, AL. 35160

v.

Harley G. Lappin,
Joyce K. Conley,
Raymond E. Holt,
Delbert G. Sauers,
Rufus Williams,
John T. Rathman,
Lisa Austin,
Lee H. Green,
Defendants

Case: 1:10-cv-00092
Assigned To: Unassigned
Assign. Date: 1/19/2010
Description: Pro Se Gen. Civil

COMPLAINT

A. Parties:

1. The Plaintiff, Jeremy V. Pinson (Reg. No. 16267-064) is a federal prisoner confined at the Federal Correctional Institutions, 565 E. Renfroe Road, Talladega, AL, 35160.

2. The Defendant Harley G. Lappin, is employed as Director of the Federal Bureau of Prisons at 320 First Street N.W., Washington, D.C. 20534.

[stamp: **RECEIVED** DEC 28 2009 Clerk, U.S. District and Bankruptcy Courts]

3. The Defendant, Joyce Conley is employed as Assistant Director (C.P.D.), Federal Bureau of Prisons, 320 First Street N.W., Washington, D.C., 20564.

4. The Defendant, Raymond E. Holt is employed as Regional Director, Federal Bureau of Prisons, 3800 Camp Creek Parkway S.W. Bldg. 2000 Atlanta, GA, 30331.

5. The Defendant, Delbert G. Sauers is employed as D.S.C.C. Chief, Federal Bureau of Prisons, 346 Marine Forces Drive, Grand Prairie, Texas, 75051.

6. The Defendant, Rufus Williams is employed as Regional Corr. Services Administrator, 3800 Camp Creek Parkway S.W., Bldg. 2000, Atlanta, GA, 30331.

7. The Defendant, John T. Rathman is employed as Warden, FCI Talladega, 565 E. Renfroe Road, Talladega, AL, 35160.

8. The Defendant, Lisa Austin, is employed as Chief Designator, Federal Bureau of Prisons, 346 Marine Forces Drive, Grand Prairie, Texas, 75051.

9. The Defendant, Lee H. Green is employed as Hearings Administrator, Federal Bureau of Prisons, 3800 Camp Creek Parkway S.W., Bldg. 2000, Atlanta, GA 30331.

10. All defendants are sued for monetary damages in their individual capacity only.

11. All defendants are sued for injunctive relief in their individual and official capacity.

B. Jurisdiction

1. Juris diction is asserted pursuant to 28 U.S.C. 1331 and 2201-02.

2. Jurisdiction is additionally asserted pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

C. Cause of Action

I. Claim One: Violation of the Eighth Amendment to United States Constitution;

a. Supporting Facts:

1. Plaintiff is incarcerated in the Federal Bureau of Prisons.

2. Defendant Lappin is the Director of the Federal Bureau of Prisons ("BOP") and conducts business at the BOP Central Office which is located in Washington, D.C.

3. Defendant Conley is the BOP Assistant Director who oversees the Correctional Programs Division and conducts business at the BOP Central Office which is located in Washington, D.C.

4. Defendants Lappin and Conley supervise operations in 107 federal prisons located within 6 geographic regions of the BOP.

5. Defendants Lappin and Conley serve as policymaker's for the BOP and in the course of daily business review reports of incidents

occurring at federal prisons nationwide and also monitor gang-related activity occurring within federal prisons.

6. Defendant Lappin in conjunction with Defendant Conley, formulated and approved Program Statement 5217.01 in November 2008.

7. Program Statement 5217.01 created the BOP's Special Management Units which are located, or believed located, at Oxford, Wisconsin; Talladega, Alabama; Lewisburg, Pennsylvania; Oakdale, Louisiana and Victorville, California.

8. Special Management Units are designed to house inmates who have while in custody allegedly participated in geographical group, gang related activity or disruptive conduct of the greatest severity, among other things.

9. An inmate who is approved for placement in a Special Management Unit must for 18 to 24 months take a cellmate, remain misconduct free and participate in any scheduled programs.

10. Gangs or geographical groups housed in the Special Management Unit include but are not limited to PAISA, Blood, Crip, Mexican Mafia, Texas Syndicate, California Aryan Brotherhood, Texas Aryan Brotherhood, SAC, SAW, Mexikanemi, Gangster Disciples and others.

11. Many of the gangs assigned to the Special Management Unit are enemies of other gangs housed therein who have vowed to murder or do serious bodily injury against rival gangmembers.

12. Progam Statement 5217.01 requires inmates to coexist peacefully with known enemies and makes no distinction between assaultive and

predacious inmates, and those who are victims of such behavior.

13. Since the Special Management Units were created by Defendants Lappin and Conley, hundreds of inmate on staff, inmate on inmate assaults have occurred in addition to several hostage situations and suicides.

14. Defendants Lappin and Conley are aware of the violence which is occurring within Special Management Units as they are notified in writing subsequent to each incident, but have failed to take reasonable steps to prevent further violence or to seperate rival gangs.

15. Defendants Holt and Conley participated in the designation of 98 inmates, including Plaintiff, to the Talledega Special Management Unit. The final decision to place Plaintiff into a Special Management Unit occurred at Washington, D.C.

16. Defendants Conley and Holt were are the Plaintiff was a homosexual and faced a substantial risk of harm if sent to a Special Management Unit at the time they approved his placement.

17. Defendant Green conducted Plaintiffs hearing on Referral to a Special Management Unit and was aware of the substantial risk of harm Plaintiff faced when he recommended Plaintiff be placed in a SMU.

18. Defendants Austin and Sauers designated the Plaintiff to the Talladega Special Management Unit though they were aware of Plaintiff's safety needs and also aware of the violent, predacious

nature inmates they also designated to the Talladega Special Management Unit.

19. Defendants Sauers and Austin failed to seperate the Plaintiff from known enemies or to property identify the Plaintiff as a former associate of the Sureno gang.

20. Defendants Rathman and Williams supervised operations at the Talladega Special Management Unit and coerced inmates into life threatening conditions by forcing rival inmates to house together in cells or general housing areas.

21. All defendants' actions were supervised or coordinated from Washington, D.C.

22. The Special Management Units are unconstitutionally violent and dangerous.

23. The Plaintiff is in imminent danger of death or serious bodily injury.

II. CLAIM TWO: Violation of First Amendment to United States Constitution;

a. SupportingFacts:

1. Paragraphs of CLaim One are reincorporated herein.

2. On dozens of occasions the Plaintiff received mail from legal entities and such mail was opened outside the presence of the Plaintiff.

3. Defendants Lappin, Conley, Holt and Rathman knowingly permitted correctional staff to open Plaintiff's privileged legal communications outside his presence and to hold the same for up to 2 weeks.

4. Policies concerning inmate mail processing were created and are supervised from Washington, D.C.

5. On at least 2 occasions Plaintiff did not receive mail from U.S. District Courts which contained deadlines that the Plaintiff missed as a result of the aforementioned policy concerning legal mail.

6. BOP Regulations require all legal entities to use specific language in identifying privileged correspondence and ignore any markings which indicate the legal nature of the correspondence but which don't use the specific language in the regulation.

D. Requested Relief

1. Nominal Damages - $ 1.00

2. Punitive Damages - $ 1,500,000.00

3. Declaratory Relief declaring Program Statement 5217.01 to Violate the 8th Amendment to the U.S. Constitution.

4. Injunctive Relief enjoining defendants from coercing inmates in Special Management Units to interact and come into physical contact with rival gangmembers or individuals whom they reasonably believe would cause them harm

It is So Prayed.

Respectfully,

/s/ Jeremy Pinson
Jeremy Pinson #16267-064
FCI Talladega
P.O. Box 1000
Talladega, AL, 35160
Plaintiff

I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the aforegoing is true and correct to the best of my knowledge and belief. Executed this 22nd of December 2009.

/s/ Jeremy Pinson
Jeremy Pinson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[date-stamp:]
FILED
JAN 19 2010
CLERK, U.S. District
and Bankruptcy Courts

Jeremy V. Pinson,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 10 0092
Harley G. Lappin *et al.*,	)	
	)	
Defendants.	)	
	)	

TRANSFER ORDER

This matter is before the Court on plaintiff's *pro se* complaint and application to proceed *in forma pauperis*. Plaintiff is a federal prisoner currently confined at the Federal Correctional Institution in Talladega, Alabama. Plaintiff alleges that prison officials there violated his Eighth Amendment rights by placing him in the Talladega Special Management Unit where he is allegedly "at substantial risk of harm," Compl. at 5, and his First Amendment rights by opening his legal mail outside of his presence. *See id.* at 6. He seeks $1.5 million in monetary damages and equitable relief. Because none of the alleged events forming the basis of the complaint occurred in the District of Columbia, this venue is improper for litigating the claims. *See* 28 U.S.C. § 1391(b) (designating the proper venue under the circumstances presented as the location

where a substantial part of the events occurred). The Court finds it in the interests of justice and judicial economy to transfer the case to the appropriate judicial district. Accordingly, it is this 8th date of January 2010,

ORDERED that pursuant to 28 U.S.C. § 1406(a), that this action is hereby TRANSFERRED to the United States District Court for the Northern District of Alabama. Whether plaintiff should be permitted to proceed further without prepayment of fees is a determination to be made by the transferee court.

/s/ Colleen Kollar-Kotelly
United States District Judge

[Transcribed from handwritten document.]

United States District Court
District of Columbia

[date-stamp:]
FILED
JAN 19 2010
Clerk, U.S. District and Bankruptcy Courts

Jeremy V. Pinson,
Plaintiff,

v.

Harley G. Lappin, et al.,
Defendants

Case No. 10-0092 UNA

Motion for Reconsideration

Comes Now the Plaintiff, pro se, and seeks reconsideration of the Court's Jan. 19, 2010 Order transferring this case to the Northern District of Alabama.

Plaintiff's objection is based upon the fact that several of the defendants are physically located within the District of Columbia and their decisions were made also within the District of Columbia. The authority to transfer Plaintiff to a prison in Alabama rests with officials located in the District of Columbia. The Northern District of Alabama does not possess jurisdiction to grant injunctive relief against officials in the District of Columbia for

actions, customs or policies which originate in Washington, D.C.

Wherefor the Plaintiff respectfully prays that the Court vacate it's Order transferring this case.

Respectfully,

/s/ Jeremy Pinson

Jeremy Pinson #16267-064
FCI Talladega S.M.U.
PO Box 1000
Talladega, AL, 35160
Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[date-stamp:]
FILED
FEB 19 2010
Clerk, U.S. District and Bankruptcy Courts

JEREMY V. PINSON,
Plaintiff,

v.

HARLEY G. LAPPIN, *et al.*,
Defendants.

Civil Action No. 10-0092

ORDER

It is hereby

ORDERED that plaintiff's motion for reconsideration of the January 19, 2010 Transfer Order [Dkt. #4] is DENIED

SO ORDERED.

/s/ Henry H. Kennedy
United States District Judge

DATE: 2/7/2010

[Transcribed from handwritten document.]

United States District Court
District of Columbia

[date-stamp:]
FILED
MAR 01 2010
Clerk, U.S. District and Bankruptcy Courts

Jeremy Pinson,
Plaintiff,

v.

Harley Lappin, et al.,
Defendants

Case No. 10-0092 UNA

Notice of Appeal

Comes Now the Plaintiff pursuant to Fed. R. App. P. 4 and appeals the Court's Transfer Order (Dkt. #4) to the U.S. Court of Appeals for the D.C. Circuit.

Respectfully,

/s/ Jeremy Pinson

Jeremy Pinson #16267-064
Federal Correctional Institution
PO Box 1000
Talladega, AL, 35160
Plaintiff

cc: Unrepresented Defendants
U.S. Attorney (D.C.)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term 2009**
1:10-cv-00092-UNA

Filed On: March 15, 2010 [1234949]

Jeremy Pinson,

Appellant

v.

Harley G. Lappin, et al.,

Appellees

ORDER

Petitioner's recently filed notice of appeal has been transmitted to this court from the U.S. District Court for the District of Columbia. The notice seeks review of an order of the district court transferring petitioner's civil action to another district court. The proper means for contesting such a transfer is a petition for writ of mandamus filed in this court. See D.C. Circuit Handbook of Practice and Internal Procedure III.G.3 (2007). Accordingly, it is, on the court's own motion,

ORDERED that petitioner's notice of appeal be construed as a petition for writ of mandamus. It is

FURTHER ORDERED that by April 14, 2010, petitioner submit a memorandum of law and fact in support of the petition. The memorandum

may not exceed 30 pages. Failure by petitioner to comply with this order will result in dismissal of the petition for lack of prosecution. See D.C. Cir. Rule 38. It is

FURTHER ORDERED, on the court's own motion, that by April 14, 2010, petitioner either pay the $450 docketing fee to the Clerk, U.S. Court of Appeals for the District of Columbia Circuit, or file with this court a motion for leave to proceed on appeal in forma pauperis. See Attachment.

The Clerk is directed to transmit a copy of this order to the Clerk of the District Court as a request to delay transfer of that court's case until disposition of the petition by this court. The Clerk is further directed to send a copy of this order to petitioner by whatever means necessary to ensure receipt.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Heather T. Stockslager
Deputy Clerk

[Form and handwritten responses transcribed.]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[**RECEIVED** stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT
FILED MAR 29 2010
CLERK

Jeremy Pinson — USCA No. 10-5059
Appellant
v.
Harley Lappin, et al. — USDC No. 10-CV-00092-UNA

MOTION FOR LEAVE TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, Jeremy Pinson, declare that I am the X appellant/petitioner __ appellee/respondent in the above-entitled proceeding. In support of this motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to prepay the costs of said proceeding or to give security therefor. My affidavit or sworn statement is attached.

I believe I am entitled to relief. The issues that I desire to present on appeal/review are as follows: (*Provide a statement of the issues you will present to the court. You may continue on the other side of this sheet if necessary.*)

1) Whether the district court erred in transferring case?
2) Whether District of District of Columbia is proper venue for suit against multiple defendants some located in District of Columbia and other states?

Signature /s/ Jeremy Pinson

Name of *Pro Se* Litigant (PRINT) Jeremy Pinson

Address FCI Talladega, PO Box 1000, Talladega, AL, 35160.

Submit original with a certificate of service to:

Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse, Room 5523
333 Constitution Avenue, N.W.
Washington, DC 20001

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Jeremy Pinson — USCA No. 10-5059

v.

Harley Lappin, et al. — USDC No. 10-CV-00092-UNA

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

****

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: /s/ Jeremy Pinson

My issues on appeal are:

1) Whether the district Court erred in transferring case?
2) Whether District of District of Columbia is proper venue for suit against multiple defendants, some located in District of Columbia and other states?

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
	You	Spouse	You	Spouse
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child support	$ 0	$ 0	$ 0	$ 0

Retirement (such as social security, pensions, annuities, insurance	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): Family	$30	$ 0	$ 20	$ 0
Total monthly income	$ 30	$ 0	$ 20	$ 0

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address
N/A	NONE
N/A	NONE
N/A	NONE

Dates of employment	Gross monthly pay
NONE	0
NONE	0
NONE	0

3. List your spouse's employment history for the past *two* years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address
N/A	N/A
N/A	N/A

Dates of employment	Gross monthly pay
N/A	N/A
N/A	N/A

4. How much cash do you and your spouse have? $15.20

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account
N/A	N/A
N/A	N/A
N/A	N/A

Amount you have	Amount your spouse has
$ 0	$ 0
$ 0	$ 0
$ 0	$ 0

If you are a prisoner, seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)

N/A

N/A

N/A

Other real estate(Value)

N/A

N/A

N/A

Motor Vehicle #1 N/A (Value)

Make & Year: N/A

Model: N/A

Registration #:N/A

Motor Vehicle #2 0 (Value)

Make & Year: N/A

Model: N/A

Registration #: N/A

Other Assets (Value)

0

0

0

Other Assets (Value)

0

--

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	0	0
N/A	0	0
N/A	0	0

7. State every person, business, or organization to whom you or your spouse owes money, the nature of the indebtedness, and the amount owed.

Person to whom you or your spouse owe money	Nature of indebtedness (e.g. mortgage, credit card)	Amount owed	
		by you	by spouse
N/A	N/A	0	0

8. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

9. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ 0
Are real-estate taxes included	__ Yes	X No
Is property insurance included?	__ Yes	X No
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0

Food	$ 4	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 2	$ 0
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 10	$ 0
Insurance (not deducted from wages or included in mortgage payments)	$ 0	$ 0
Homeowner's or renters	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: N/A	$ 0	$ 0
Taxes (not deducted from wages or included in	$ 0	$ 0

mortgage payments)		
(specify) N/A	$ 0	$ 0
Installment Payments	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Credit card (name): N/A	$ 0	$ 0
Department store (name): N/A	$ 0	$ 0
Other: N/A	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): legal	$ 6	$ 0
Total monthly expenses:	$ 22	$ 0

10. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
__ Yes X No

If yes, describe on an attached sheet.

11. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form?
__ Yes X No

If yes, how much? $ 0

If yes, state the attorney's name, address, and telephone number.

N/A

12. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?
[X] Yes [ ] No

If yes, how much? $ 24.00

If yes, state the person's name, address, and telephone number:

Elite Paralegal Services

PO Box 2131

Appleton WI 54912

13. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

INCARCERATED

14. State the address of your legal residence.

FCI Talladega

PO Box 1000

Talladega, AL 35160

Your daytime phone number: (000) 000-0000

Your age: 24 Your years of schooling: 8

[Handwritten Certificate of Service omitted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Mailroom stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED APR -1 2010
CLERK

Case No.: 10-5059 **Name:** Jeremy Pinson

Title: Jeremy Pinson v. Harley Lappin, et al. **Registration #R16267-064**

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, Jeremy Pinson, Registration #R16267-064, hereby consent to have the appropriate prison officials withhold from my prison account and pay to the Clerk, U.S. District Court for the District of Columbia an initial payment of 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my notice of appeal; or

(b) the average monthly balance in my account for the six-month period

immediately preceding the filing of my notice of appeal.

I further consent to have the appropriate prison officials collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer must forward the interim payment to the Clerk's Office, U.S. District Court for the District of Columbia until such time as the $455 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional costs imposed by the Court of Appeals.

Signature of Prisoner: /s/ Jeremy Pinson
Date: 3-25-10

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No.: 10-5059 **Name:** Jeremy Pinson

Title: Jeremy Pinson v. Harley Lappin, et al. **Registration** #R16267-064

PRISONER TRUST ACCOUNT REPORT

To: Trust Officer

From: Clerk, U.S. Court of Appeals for the D.C. Circuit

Under the Prison Litigation Reform Act, a prisoner seeking to bring a civil action, or appeal a civil judgment, in forma pauperis must obtain from the Trust Officer of each institution in which the prisoner was confined during the six months preceding the filing of the action or appeal, a certified copy of the prisoner's trust account statement for that period. See 28 U.S.C. § 1915(a)(2).

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the court in advance of April 21, 2010.

DATE NOTICE OF APPEAL FILED:	March 1, 2010
TRUST ACCOUNT BALANCE at time of filing the notice of appeal:	$ 10.00
AVERAGE MONTHLY DEPOSITS during the six months preceding the filing of the notice of appeal:	$48.00
AVERAGE MONTHLY BALANCE during the six months preceding the filing of the notice of appeal:	$ 21.75

I certify under penalty of perjury that the above information accurately states the deposits and balances in the prisoner's trust account for the period shown and that the attached ledger sheets are true copies of account records maintained in the ordinary course of business.

Authorized Signature: /s/ illegible **Date:** 03/23/10

Title: CSM

/25/2009	TL1225		TRUL Withdrawal	($2.00)		$3
:57:07 AM						
/22/2009	70148401		Lockbox - CD	$40.00		$4
5:48 AM						
/22/2009	ITDGD034 -		Debt Encumbrance		($8.00)	---
5:48 AM	489					
/21/2009	108		Sales	($2.60)		$
5:46 PM						
/17/2009	TL1217		TRUL Withdrawal	($2.00)		$
7:11 PM						
/15/2009	18		Sales	($1.70)		$
9:56 PM						
/9/20099:54:09		321	Bills	($3.50)		$
M						
/8/20097:31:58	TL1208		TRUL Withdrawal	($2.00)		$
M						
/8/2009 1:23:45	3		Sales	($10.35)		$1
M						
/4/20094:03:52		310	Books	($2.00)		$2
M						
/4/20094:00:12		307	Court Fees	($5.00)		$2
M						
/1/20092:46:21:00			Sales	($15.20)		$2
M						
/1/20091:58:58		296	Bills	($5.00)		$4
M						
/1/2009	ITDGD034 -		Debt Encumbrance - Released		$13.00	---
:21:38 AM	213					
/1/2009	ITDGD034 -		Debt Encumbrance - Released		$4.60	---
:21:38 AM	170					
/1/2009	ITDGD034	277	PLRA Payment	($17.60)		$4
:21:38 AM						
/24/2009	1		Sales	$16.35		$6
:10:07 AM						

Total Transactions: 96

Totals: **$15.20** **$0.00**

Current Balances

de	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Acc Bal
	$0.20	$0.00	$0.00	$0.00	$0.00	$15.00	$0.00	$1
	$0.20	$0.00	**$0.00**	**$0.00**	**$0.00**	**$15.00**	**$0.00**	**$1**

Other Balances

ational 6 Deposits	National 6 Months Withdrawals	National 6 Months Avg Daily Balance	Local Max Balance - Prev 30 Days	Average Balance - Prev 30 Days	Commissary Restriction Start Date	Commis Restriction
$288.00	$318.00	$21.75	$93.64	$14.46	N/A	

[Transcribed from handwritten document.]

United States Court of Appeals
For the District of Columbia Circuit

[Mailroom stamp omitted]

No. 10-5059 Jeremy Pinson, Appellant, v. Harley G. Lappin, et al., Appellees.	[date-stamp:] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT FILED APR -5 2010 CLERK Motion to Stay Collection of Fees

Comes Now the Appellant and moves the Court to Stay Collection of fees in this case until the filing has been paid in full in Case No. 09-14242-C before the U.S. Court of Appeals for the Eleventh Circuit.

28 U.S.C. 1915(b)(2) permits the recoupment of up to 20% of a prisoners monthly income at any given time. Whitfield v. Scully, 241 F.3d 264, 276-78 (2d Cir. 2001). See also Lafauci v. Cunningham, 139 F. Supp. 2d 144, 147 (D. Mass. 2001) (stating that simultaneous collection of fees depriving prisoners of all sources could "raise serious constitutional concerns").

Wherefore the Court should stay collection of fees in this case until final recoupment of fees in Case No. 09-14242-C, before the U.S. Court of Appeals for the Eleventh Circuit.

/s/ Jeremy Pinson

Jeremy Pinson, Reg. No.
#16267-064
Federal Correctional
Institution
PO Box 1000
Talladega, AL, 35160
Appellant – Pro Se

Certificate of Service

I certify a copy of this motion was served upon the Appellees via U.S. Mail this 28th day of March 2010

/s/ Jeremy Pinson

Jeremy Pinson
Appellant

[Transcribed from handwritten document.]

United States Court of Appeals
District of Columbia Circuit

[Mailroom stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED JUL 22 2010
CLERK

Jeremy Pinson, Appellant, v. Harley G. Lappin, et al., Appellees.	No. 10-5059 Dist. Ct. No. 1:10-CV-00092-UNA Motion for Joinder of Appellees and For Appointment of Counsel

Comes Now Appellant Jeremy Pinson and Movants Edwin Guzman, Antoine Bruce, James Chatman, Enrique Chavez, Richard Blount, Joseph Stevens, Anthony Zaragoza, Matthew Eyre, Chavon Wiggins, Nathaniel Theris, Damarcus Law, Donte Allen, John Leigh, Ramiro Pacheco and respectfully request the Court add movants as parties to this appeal and appoint counsel to represent them.

In support of this Motion the parties would show that this lawsuit was filed in the District Court on Dec. 20, 2009. Movants filed a Motion to join suit on Jan. 11, 2010 however the Clerk of the District Court returned the Motion for Joinder on 1-22-2010

with a Copy of the District Courts transfer Order. On that same day the Appellant filed a Motion to Reconsider he transfer Order and sent back to the District Court Movants' Motion For Joinder. On 2-23-10 the Clerk of the District Court again returned the Motion unfiled with a Copy of the Order denying the Appellants Motion For Reconsideration. On 2-23-10 Appellant submitted a Notice of Appeal, with a seperate Notice filed by Movants'. One 3-1-10 the Movants' Notice of Appeal was against returned by the District Court Clerk unfiled. On March 15, 2010 this Court converted Appellants' Notice of Appeal to a Petition for a Writ of Mandamus however the Order did not include Movants' as parties to such. This Motion follows.

Legal Analysis

Petitioner/Appellant filed suit pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). Movants who asserted identical claims against the defendants moved to join the suit pursuant to Fed. R. Civ. P. 20 which is permissible. See: In re Prison Litigation Reform Act, 105 F.3d 1131, 1138 (6th Cir. 1997); also: Boribourne v. Berg, 391 F.3d 852, 854-56 (7th Cir. 2004)[.] Movants assert the District Court Clerk exceeding his/her legal authority in refusing to file the Motion to Join and Joint Notice of Appeal as such determination could only be made by a District Judge upon the record.

Conclusion

Wherefore the Court should grant this Motion, direct the Clerk of this Court to add movants as parties to this appeal, and appoint counsel to

represent them or to permit filing of a Joint Amended Opening Brief.

It is So Prayed.

/s/ Jeremy Pinson
Jeremy Pinson #16267-064
/s/ Antoine Bruce
Antoine Bruce #35363-007
/s/ Richard Blount
Richard Blount #67822-065
/s/ Joseph Stevens
Joseph Stevens #07964-046
/s/ Chavon Wiggins
Chavon Wiggins #14628-112
/s/ Nathaniel Theris
Nathaniel Theris #07049-003
/s/ Ramiro Pacheco
Ramiro Pacheco #33831-177
/s/ John Leigh
John Leigh #03857-087

/s/ Edwin Guzman
Edwin Guzman #63269-097
/s/ James Chatman
James Chatman #18367-047
/s/ Enrique Chavez
Enrique Chavez #26980-112
/s/ Anthony Zaragoza
Anthony Zaragoza #18090-112
/s/ Mathew Eyre
Matthew Eyre #14948-081
/s/ Damarcus Law
Damarcus Law #08616-003
/s/ Donte Allen
Donte Allen #33008-007

Located at: FCI Talladega
PO Box 1000
Talladega, AL, 35160

[Certificate of Service omitted]

[Transcribed from handwritten document.]

United States District Court
For the District of Columbia

Jeremy Pinson, Plaintiff, v. Harley Lappin, et al., Appellees.	Case No. 10-CV-00092-UNA Court of Appeals No. 10-5059

[date-stamp:]
RECEIVED
AUG 26 2010
Clerk, U.S. District &
Bankruptcy Courts for the
District of Columbia

Amended Notice of Appeal

Comes Now Jeremy Pinson, Joseph Stevens, Richard Blount, Jeremy Brown, Terrance Young, Joe Ramirez, Mario Zuniga, Alexis Ayala, Maximillian McGarvie, Richard Hugly, Bobby Cowley, Jesse Jensrud, Ronnie Coleman, Brooks Terrell, Angel Fernandez, Anthony Zaragoza, Edwin Guzman, Matthew Eyre, Javier Gonzalez, Ramiro Pacheco, Ramiro Rosillo, James Chatman, Joel Murillo, Antoine Bruce, Andrew Hobbs, Shawn Cropp, Nathaniel Theris, Ossai Ugochukwo, Manuel Gonzalez, David Gates, Sireno Castro, Laron Marshall, Conghan To, Enrique Chavez, Gary Kornegay, Chavon Wiggins, Randy Atchley, Sean Fabian, Damarcus Law, Wayne Jenkins, Windzer Fleurissaint, Donte Allen, John Leigh, proceeding

pro se, and files Notice of Appeal (Amended) this 15th day of March 2010 from the Transfer Order, and rejection by the Clerk of the Motions for Joinder, pursuant to Fed. R. App. P. 4 and D.C. Circuit Handbook of Practice and Internal Procedure III.G.3 (2007).

/s/ Jeremy Pinson
Jeremy Pinson
16267-064

/s/ Joseph Stevens
Joseph Stevens
07964-046

/s/ Richard Blount
Richard Blount
67822-065

/s/ Jeremy Brown
Jeremy Brown
31123-074

/s/ Terrance Young
Terrance Young
05600-027

/s/ Joe A. Ramirez
Joe A. Ramirez
35876-177

/s/ Mario Zuniga
Mario Zuniga
68714-253

/s/ Alexis Ayala
Alexis Ayala
#39003-037

/s/ Maximillian McGarvie
Maximillian McGarvie
56688-054

/s/ Richard Hugly
Richard Hugly
60429-079

/s/ Bobby Cowley
Bobby Cowley
34697-177

/s/ Jesse Jensrud
Jesse Jensrud
13684-041

/s/ Richard Coleman
Richard Coleman 30138-018

/s/ Brooks Terrell
Brooks Terrell
95908-071

/s/ Angel Fernandez
Angel Fernandez
51201-179

/s/ Anthony Zaragoza
Anthony Zaragoza
18090-112

/s/ Edwin Guzman
Edwin Guzman
63269-097

/s/ Mathew Eyre
Matthew Eyre
#14948-081

/s/ Javier Gonzalez	/s/ Ramiro Pacheco	/s/ Ramiro Rosillo
Javier Gonzalez	Ramiro Pacheco	Ramio Rosillo
49464-004	33831-177	86006-079

This document was mailed to the defendants on 3-15-10 via U.S. Mail and the District Court Clerk by Plaintiff Jeremy Pinson.

/s/ Jeremy Pinson
Jeremy Pinson

[ATTACHMENT TO
AMENDED NOTICE OF APPEAL]

8-22-10

Re: Pinson v. Lappin, No. 10-cv-92-UNA
Court of Appeals No. 10-5059

Dear Clerk,

Please file the enclosed amended Notice of Appeal. It is mailed late because it was just released to me 2 days ago by prison officials who had siezed it (see Memo). Please transmit to the Court of Appeals.

Sincerely,

/s/ Jeremy Pinson

[Department of Justice
Federal Bureau of Prisons
Seal]

UNITED STATES GOVERNMENT

MEMORANDUM

FEDERAL CORRECTIONAL INSTITUTION, TALLADEGA, ALABAMA 35160

DATE: 06-28-2010

Reply to Attn Of: /s/ RRowan
R. Rowan, Counselor

Subject: **Inmate Pinson, Jeremy #16762-064**
Late Filing of Legal Work

To: To Whom It May Concern

Inmate Penson, Jeremy #162687-064 is unable to have access to his legal property, due to the fact that our SIS office has confiscated all his property and FBI has it. Our SIS office states as soon as it is returned from the FBI, then they will get it back for him. I ask to take this in to consideration on his delay on filing any legal paperwork.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term 2010**
1:10-cv-00092-UNA

Filed On: April 8, 2011

Jeremy Pinson,

Appellant

v.

Harley G. Lappin, et al.,

Appellees

ORDER

Upon consideration of the amended notice of appeal transmitted to this court on September 3, 2010, and the entire record herein, it is

ORDERED that the amended notice of appeal be construed as a supplement to the petition for a writ of mandamus. It is

FURTHER ORDERED that, within thirty days of the date of this order, petitioner file a memorandum of law and fact in support of the supplement to the petition for a writ of mandamus. The memorandum may not exceed fifteen pages. Failure to comply with this order will result in dismissal of the petition for lack of prosecution. See Fed. R. App. P. 38.

The Clerk is directed to send a copy of this order to petitioner by whatever means necessary to ensure receipt.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Laura Chipley
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term 2010**
1:10-cv-00092-UNA

Filed On: June 22, 2011

Jeremy Pinson,

Appellant

v.

Harley G. Lappin, et al.,

Appellees

BEFORE: Tatel, Garland, and Brown, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, the supplement thereto, the supporting memoranda of law and fact, the motion for joinder of appellees and for appointment of counsel, the motion for leave to proceed in forma pauperis, and the motion to stay collection of fees, it is

ORDERED that, within thirty days of the date of this order, appellees enter appearances and file a response to the motion for leave to proceed in forma pauperis and a response to the motion to stay collection of fees. Appellant may file replies to the responses within thirty days after the responses are filed. It is

FURTHER ORDERED that consideration of appellant's remaining submissions be deferred pending further order of the court.

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2012**
1:10-cv-00092-UNA

Filed On: January 29, 2013

Jeremy Pinson, et al.,

Appellants

v.

Charles E. Samuels, Jr., et al.,

Appellees

BEFORE: Garland, Brown, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the notice of appeal construed as a petition for a writ of mandamus, the amended notice of appeal construed as a supplement to the petition for a writ of mandamus, the supporting memoranda of law and fact, the "motion for joinder of appellees and for appointment of counsel," Jeremy Pinson's motion for leave to proceed in forma pauperis, the motion to stay collection of fees, the response to the motion for leave to proceed in forma pauperis and motion to stay collection of fees, the reply, the supplemental pleadings filed in January and February 2012, the submissions filed in response to the court's order of

April 18, 2012, including Jeremy Brown's motion for leave to proceed in forma pauperis, and Mikeal Glenn Stine's "verified motion requesting to join the appellants/movants," it is

ORDERED that Mikeal Glenn Stine's motion to join the appellants/movants be denied, as there is no indication that Stine sought to join this case below or that he has a claim concerning the return of pleadings submitted to the district court or the transfer of the action to the Northern District of Alabama, the matters at issue in the mandamus petition. It is

FURTHER ORDERED that the motion for joinder of appellees be dismissed as moot as to all of the movants other than Nathaniel Theris, as the other movants also signed the original notice of appeal construed as a mandamus petition or the amended notice of appeal construed as a supplement to the mandamus petition. It is

FURTHER ORDERED that the motion for joinder of appellees be denied and that the mandamus petition be dismissed as to Nathaniel Theris, as he has failed to keep the court informed of his current address and to prosecute this case. See D.C. Cir. Rules 38 and 46(c). It is

FURTHER ORDERED that the mandamus petition be dismissed as to all of the remaining individuals who signed the amended notice of appeal construed as a supplement to the mandamus petition, except for Jeremy Pinson, Andrew Wesley Hobbs, and Jeremy Brown. The other individuals have either died, failed to keep the court informed of their current addresses, failed to respond to the court's order of April 18, 2012, or otherwise

prosecute the case, or indicated that they do not wish to participate in the case. It is

FURTHER ORDERED that Andrew Wesley Hobbs's response to the court's order of April 18, 2012, be construed as including a motion for leave to proceed in forma pauperis and that the motion be granted. It is

FURTHER ORDERED that Jeremy Brown's motion for leave to proceed in forma pauperis be granted. It is

FURTHER ORDERED that the mandamus petition (with Jeremy Pinson, Andrew Wesley Hobbs, and Jeremy Brown as the remaining petitioners), Jeremy Pinson's motion for leave to proceed IFP, and his motion to stay collection of fees be referred to a merits panel. The parties are directed to address the pertinent issues in their briefs, rather than incorporate their prior arguments by reference. Moreover, petitioners are directed to address their standing to pursue claims concerning the return of pleadings submitted to the district court and the transfer of the case to the Northern District of Alabama. The allocation of filing fees will be decided by the merits panel in light of its resolution of Jeremy Pinson's motion for leave to proceed in forma pauperis. It is

FURTHER ORDERED that

Anthony F. Shelley
Miller & Chevalier
655 Fifteenth Street NW
Suite 900
Washington DC 20005-5701

a member of the bar of this court, be appointed as amicus curiae to present arguments in favor of petitioners' positions. It is

FURTHER ORDERED that petitioners may file a joint opening brief of 14,000 words and a joint reply brief if 7,000 words, or they may file individual opening briefs of 8,000 words for Jeremy Pinson and 3,000 words each for Andrew Wesley Hobbs and Jeremy Brown and individual reply briefs of 4,000 words for Jeremy Pinson and 1,500 words each for Andrew Wesley Hobbs and Jeremy Brown.

The Clerk is directed to issue an appropriate briefing schedule and calendar this case for presentation to a merits panel.

Per Curiam

[Transcribed from handwritten document.]

United States Court of Appeals
District of Columbia Circuit

[Mailroom stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED FEB 19 2013
CLERK

Jeremy Pinson, et al. APPELANTS,	
v.	No. 10-5059
Charles Samuels, et al., APPELLEES	

Motion for Reconsideration

Comes Now Antoine Bruce and seeks reconsideration of the Jan. 29, 2013 Order dismissing him from this action for failure to comply with the April 18, 2012 Order (Doc. 1369470) which he received April 27, 2012.

Movant asserts he complied with the Order on April 28, 2012 and delivered to prison staff the Consent Form and In Forma Pauperis Motion on that date to mail to this Court. Until Jan. 29, 2013 Order Movant was unaware the Court had not received the materials mailed.

Wherefore movant prays the Court resend the April 18, 2012 Order and forms and permit 21 days to remail it to the Court and vacate Movant's dismissal.

/s/ Antoine Bruce
Antoine Bruce #35363007
ADX U.S. Penitentiary
PO Box 8500
Florence CO 81226

Certificate of Service

I certify service of this motion upon Jeremy Pinson, Jeremy Brown, Andrew Hobbs, and AUSA Wynne Kelly via U.S. Mail on 2-8-13.

/s/ Antoine Bruce
Antoine Bruce

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2012**
1:10-cv-00092-UNA

Filed On: June 3, 2013

Jeremy Pinson, et al.,

Appellants

v.

Charles E. Samuels, Jr., et al.,

Appellees

BEFORE: Henderson, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the motions for reconsideration filed by Antoine Bruce and John Samuel Leigh, it is

ORDERED that the motions be granted and that Bruce and Leigh be reinstated as petitioners in this case. It is

FURTHER ORDERED that, within thirty days of the date of this order, Bruce and Leigh file completed motions for leave to proceed in forma pauperis, Prisoner Trust Account Reports, and Consents to Collection of Fees (enclosed). Failure to comply with this order will result in dismissal of the mandamus petition as to Bruce and Leigh for lack of

prosecution. See D.C. Cir. Rule 38. The completed documents shall be referred to the merits panel to which this case is assigned.

Bruce and Leigh have not requested to file briefs, and they may join in the briefs to be filed by the amicus curiae and/or the other petitioners.

The Clerk is directed to send copies of this order to Bruce and Leigh by whatever means necessary to ensure receipt.

Per Curiam

[Form and handwritten responses transcribed.]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

[**RECEIVED** stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED JUL -1 2013
CLERK

Jeremy Pinson — USCA No. 10-5059
Appellant
v.
Harley Lappin, et al. — USDC No. 10-cv-00092-UNA

MOTION FOR LEAVE TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, Antoine Bruce, declare that I am the X appellant/petitioner __ appellee/respondent in the above-entitled proceeding. In support of this motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to prepay the costs of said proceeding or to give security therefor. My affidavit or sworn statement is attached.

I believe I am entitled to relief. The issues that I desire to present on appeal/review are as follows: (*Provide a statement of the issues you will present to the court. Attach an additional sheet if necessary.*) THE ISSUES THAT I DESIRE TO PRESENT ON APPEAL/REVIEW ARE THE SAME ISSUES THAT JEREMY PINSON AND THE COURT APPOINTED AMICUS CURIAE HAS BRUNG FORTH TO THE COURT'S ATTENTION.

Signature /s/ Antoine Bruce

Name of *Pro Se* Litigant Antoine Bruce

Address U.S. Penitentiary ADMAX-ADX, P.O. BOX 8500 Florence, Colorado 81226-8500

Submit original with a certificate of service to:

Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse, Room 5523
333 Constitution Avenue, N.W.
Washington, DC 20001

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

	Average monthly amount during the past 12 months		Amount expected next month	
Income Source	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
	You	Spouse	You	Spouse
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child support	$ 0	$ 0	$ 0	$ 0

Retirement (such as social security, pensions, annuities, insurance	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): ORDERLY Job	$ 13.09			
Total monthly income	$ 13.09			

2. List your employment history for the past two years, most recent employer first. (Gross Monthly pay is before taxes or other deductions.)

Employer	Address
N/A	NONE
N/A	NONE
N/A	NONE

Dates of employment	Gross monthly pay
NONE	$ 0
NONE	$ 0
NONE	$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address
N/A	N/A
N/A	N/A

Dates of employment	Gross monthly pay
N/A	N/A
N/A	N/A

4. How much cash do you and your spouse have? ___

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account
N/A	N/A
N/A	N/A
N/A	N/A

Amount you have	Amount your spouse has
$ 0	$ 0
$ 0	$ 0
$ 0	$ 0

If you are a prisoner, seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)

N/A

N/A

N/A

Other real estate(Value)

N/A

N/A

N/A

Motor Vehicle #1 N/A (Value)

Make & Year: N/A

Model: N/A

Registration #:N/A

Motor Vehicle #2 0

Make & Year: N/A

Model: N/A

Registration #: N/A

Other Assets (Value)

0

0

0

Other Assets (Value)

0

0

0

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

Jeremy Pinson — USCA No. 10-5059

v.

Harley Lappin, et al. — USDC No. 10-cv-00092-UNA

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

****

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: /s/ Antoine Bruce

Date: 6-17-2013

My issues on appeal are: THE SAME ISSUES THAT JEREMY PINSON AND THE COURT APPOINTED AMICUS CURIAE HAS BRUNG FORTH TO TE COURTS ATTENTION.

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	0	0
N/A	0	0
N/A	0	0

7. State every person, business, or organization to whom you or your spouse owes money, and the nature of the indebtedness, and the amount owed.

Person to whom you or your spouse owe money	Nature of indebtedness (e.g. mortgage, credit card)	Amount owed	
		by you	by spouse
N/A	0	0	0

8. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

9. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ 0
Are real-estate taxes included	__ Yes	X No
Is property insurance included?	__ Yes	X No
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0

Home maintenance (repairs and upkeep)	$0	$0
Food	$0	$0
Clothing	$0	$0
Laundry and dry-cleaning	$0	$0
Medical and dental expenses	$2	$0
Transportation (not including motor vehicle payments)	$0	$0
Recreation, entertainment, newspapers, magazines, etc.	$0	$0
Insurance (not deducted from wages or included in mortgage payments)	$0	$0
Homeowner's or renters	$0	$0
Life	$0	$0
Health	$0	$0
Motor Vehicle	$0	$0

Other: N/A	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)	$ 0	$ 0
(specify) N/A	$ 0	$ 0
Installment Payments	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Credit card (name): N/A	$ 0	$ 0
Department store (name): N/A	$ 0	$ 0
Other: N/A	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify):	$ 0	$ 0

N/A

Total monthly expenses:	$ 0	$ 0

10. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
__ Yes X No

If yes, describe on an attached sheet.

11. Have you paid-or will you be paying-an attorney any money for services in connection with this case, including the completion of this form?
__ Yes X No

If yes, state the attorney's name, address, and telephone number.

N/A

12. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? No

If yes, how much? $ 0

If yes, state the person's name, address, and telephone number:

N/A

13. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

INCARCERATED

14. State the city and state of your legal residence.

Florence, Colorado-ADMAX-ADX PO BOX 8500

Florence U.S. Penitentiary 81226

Your daytime phone number: (000) 000-0000

Your age: 29 Your years of schooling: 10

Last four digits of your social-security number: 5375

[Handwritten Certificate of Service omitted]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[**RECEIVED** stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED JUL -1 2013
CLERK

Case No.: 10-5059 **Name:** Antoine Bruce

Title: Jeremy Pinson, et al v. Charles Samuels, et al. **Registration No.:** 35363-007

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, Antoine Bruce, Registration #35363-007, hereby consent to have the appropriate prison officials withhold from my prison account and pay to the Clerk, U.S. District Court for the District of Columbia an initial payment of 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my notice of appeal; or

(b) the average monthly balance in my account for the six-month period

immediately preceding the filing of my notice of appeal.

I further consent to have the appropriate prison officials collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer must forward the interim payment to the Clerk's Office, U.S. District Court for the District of Columbia until such time as the $455 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional costs imposed by the Court of Appeals.

Signature of Prisoner: /s/ Antoine Bruce
Date: 6-17-2013

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[**RECEIVED** stamp omitted]

[date-stamp:]
UNITED STATES COURT
OF APPEALS FOR THE
DISTRICT OF
COLUMBIA CIRCUIT

FILED JUL -1 2013
CLERK

Case No.: 10-5059 **Name:** Antoine Bruce

Title: Jeremy Pinson, et al v. Charles Samuels, et al. **Registration No.:** 35363-007

PRISONER TRUST ACCOUNT REPORT

To: Trust Officer

From: Clerk, U.S. Court of Appeals for the D.C. Circuit

Under the Prison Litigation Reform Act, a prisoner seeking to bring a civil action, or appeal a civil judgment, in forma pauperis must obtain from the Trust Officer of each institution in which the prisoner was confined during the six months preceding the filing of the action or appeal, a certified copy of the prisoner's trust account statement for that period. See 28 U.S.C. § 1915(a)(2).

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the court in advance of July 3, 2013.

DATE NOTICE OF APPEAL FILED:	March 1, 2010
TRUST ACCOUNT BALANCE at time of filing the notice of appeal:	$ 3.23
AVERAGE MONTHLY DEPOSITS during the six months preceding the filing of the notice of appeal:	$ 0
AVERAGE MONTHLY BALANCE during the six months preceding the filing of the notice of appeal:	$ 3.23

I certify under penalty of perjury that the above information accurately states the deposits and balances in the prisoner's trust account for the period shown and that the attached ledger sheets are true copies of account records maintained in the ordinary course of business.

Authorized Signature: /s/ illegible Date: 6/20/13

Title: Trust Fund Program Specialist

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Start Date: 09/01/2009
End Date: 03/01/2010
Inmate Reg#: 35363007
Account Status: All
Institution: All

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUL - 1 2013

RECEIVED

Date: 06/20/2013
Time: 7:50:19 AM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

General Information

Inmate Reg#:	35363007	Living Quarter:	Z08-205LDS
Inmate Name:	BRUCE, ANTOINE	Arrived From:	ATL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM Z A	Account Creation Date:	11/12/2004

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
TDG	09/01/2009 01:40:51 PM	131			Sales	$0.00		$3.23
TDG	09/11/2009 10:52:30 AM	3			Sales	$0.00		$3.23
TDG	09/16/2009 12:06:35 PM	17			Sales	$0.00		$3.23
TDG	10/13/2009 07:49:03 PM	116			Sales	$0.00		$3.23
TDG	10/20/2009 07:15:04 PM	100			Sales	$0.00		$3.23
TDG	11/03/2009 01:39:29 PM	79			Sales	$0.00		$3.23
TDG	11/09/2009 12:26:37 PM	31			Sales	$0.00		$3.23
TDG	11/17/2009 12:52:57 PM	72			Sales	$0.00		$3.23
TDG	11/23/2009 03:30:57 PM	49			Sales	$0.00		$3.23
TDG	12/01/2009 01:34:00 PM	8			Sales	$0.00		$3.23
TDG	12/08/2009 02:07:01 PM	53			Sales	$0.00		$3.23
TDG	12/15/2009 02:06:20 PM	30			Sales	$0.00		$3.23
TDG	12/21/2009 07:55:15 PM	130			Sales	$0.00		$3.23
TDG	12/29/2009 02:04:53 PM	71			Sales	$0.00		$3.23
TDG	01/05/2010 12:50:47 PM	2			Sales	$0.00		$3.23
TDG	01/19/2010 07:27:14 PM	120			Sales	$0.00		$3.23
TDG	01/26/2010 12:20:03 PM	10			Sales	$0.00		$3.23
TDG	02/02/2010 12:51:24 PM	41			Sales	$0.00		$3.23
	Institution Count:	**18**						
	Total Count:	**18**			**Totals:**	**$0.00**	**$0.00**	

Date: 06/20/2013
Time: 7:50:19 AM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

General Information

Inmate Reg#:	35363007	Living Quarter:	Z08-205LDS
Inmate Name:	BRUCE, ANTOINE	Arrived From:	ATL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-Z-A	Account Creation Date:	11/12/2004

Current Balances

Alpha Code	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
FLX	($1,517.74)	$0.00	$1.46	$0.00	$1,529.37	$0.00	$0.00	$13.09
Totals:	**($1,517.74)**	**$0.00**	**$1.46**	**$0.00**	**$1,529.37**	**$0.00**	**$0.00**	**$13.09**

Other Balances

National 6 Months Deposits	National 6 Months Withdrawals	National 6 Months Avg Daily Balance	Local Max. Balance -Prev. 30 Days	Average Balance-Prev. 30 Days	Commissary Restriction Start Date	Commissary Restriction End Date
$0.00	$0.00	$13.09	$13.09	$13.09	N/A	N/A

Date: 06/19/2013
Time: 8:21 AM

Federal Bureau of Prisons
TRUFACS

Inmate Statement

Sensitive But Unclassified

Facility: FLX

JUN 19 2013

General Information

Inmate Reg#:	35363007	Living Quarter:	208-205LDS
Inmate Name:	BRUCE, ANTOINE	Arrived From:	ATL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-Z-A	Account Creation Date:	11/12/2004

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	05/07/2013 02:20:10 PM	3375			BP-199 Refusal		($110.00)	
FLX	05/21/2013 12:52:06 PM	3763			BP-199 Refusal		($190.00)	
	Institution Count:	2						
	Total Count:	2			**Totals:**	**$0.00**	**($300.00)**	

Current Balances

Alpha Code	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
FLX	($1,517.74)	$0.00	$1.46	$0.00	$1,529.37	$0.00	$0.00	$13.09
Totals:	**($1,517.74)**	**$0.00**	**$1.46**	**$0.00**	**$1,529.37**	**$0.00**	**$0.00**	**$13.09**

Other Balances

National 6 Months Deposits	National 6 Months Withdrawals	National 6 Months Avg Daily Balance	Local Max. Balance -Prev. 30 Days	Average Balance- Prev. 30 Days	Commissary Restriction Start Date	Commissary Restriction End Date
$0.00	$0.00	$13.09	$13.09	$13.09	N/A	N/A

Date: 06/19/2013
Time: 10:40:21 AM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

Start Date: 12/19/2012
End Date: 06/19/2013
Inmate Reg#: 35363007
Account Status: All
Institution: All

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PRISON LITIGATION REFORM ACT NOTICE

Pursuant to the Prison Litigation Reform Act, new requirements have been placed on prisoners proceeding pro se when filing appeals in Federal courts. The most significant restrictions relate to filing *in forma pauperis* and filing successive claims.

PROCEEDING *IN FORMA PAUPERIS*

28 U.S.C. § 1915 requires a prisoner to pay the appropriate filing fee ($450 for a petition for review from an agency decision or an original action or $455 for an appeal from the district court) when filing an appeal *in forma pauperis*. The court must assess and collect from your prison account a partial filing fee of 20% of the greater of:

(1) the average monthly deposits to your prison account; or

(2) the average monthly balance in your prison account for the six month period preceding the filing of the notice of appeal.

Thereafter, you are required to make monthly payments of 20% of the preceding month's income. The agency having custody of your account is required to forward payments from your account to the Clerk of the court each time the amount in your account exceeds $10.00, until the filing fee is paid.

If you are attempting to proceed *in forma pauperis* on appeal from a district court order in a civil case, you must seek leave to do so from the district court in the first instance. (Note that the district court's

authorization to proceed in that court *in forma pauperis* is effective only for proceedings in the district court and does not carry over to proceedings in this court.) If the district court denies leave to proceed *in forma pauperis* on appeal, you may seek leave to do so from this court. If the district court grants leave to proceed in forma pauperis on appeal, you must submit to this court a certified copy of the trust fund account statement for the six-month period preceding the filing of the notice of appeal and the consent to collection of fees form. In an original action or agency case, you must also submit a completed motion for leave to proceed on appeal *in forma pauperis* form.

Under 28 U.S.C. § 1915, you may be required to pay the appropriate filing fee in full, even if the complaint is dismissed prior to the collection of the entire filing fee.

SUCCESSIVE CLAIMS

Pursuant to the Prison Litigation Reform Act, unless a prisoner claims to be in "imminent danger of serious physical injury," he or she may not file a civil action or pursue a civil appeal *in forma pauperis* "if the prisoner has, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or failed to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g).

[Transcribed from handwritten document.]

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

[Mailroom stamp omitted]

Jeremy Pinson, et al. Appellants	No. 10-5059
v.	
Charles E. Samuels, Jr., et al. Appellees	

Joinder to Motion to Stay Collection

Comes Now Antoine Bruce, pro se, and for the reasons stated in the Motion to Stay Collection of fees by Jeremy Pinson, and the brief of amicus curiae, and seeks an Order to the BOP not to collect in excess of 20% of my income in this case and previous lawsuits such as Case No. 13-cv-00491 (D. Colo.) and 09-cv-2378 (N.D. Ala.), etc.

It is So Prayed.

/s/ Antoine Bruce
Antoine Bruce #35363-007
PO Box 8500
Florence CO 81226

[date-stamp:]
United States Court of Appeals
For the District of Columbia Circuit
FILED AUG 26, 2013
CLERK

No. 14-844

IN THE

Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR PETITIONER

ANTHONY F. SHELLEY
Counsel of Record
LAURA G. FERGUSON
DAWN E. MURPHY-JOHNSON
ADAM W. BRASKICH
KATHLEEN T. WACH
MILLER & CHEVALIER CHTD.
655 15th Street NW, Suite 900
Washington, D.C. 20005
(202) 626-5800
E-mail: ashelley@milchev.com

QUESTION PRESENTED

The Prison Litigation Reform Act ("PLRA") requires prisoners who bring federal civil actions or appeals *in forma pauperis* to pay court filing fees in installments over time. After an initial partial filing fee, the remainder is to be paid through "monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The question presented is:

When a prisoner files more than one civil action or appeal *in forma pauperis*, does § 1915(b)(2) cap the monthly exaction for filing fees at 20% of the preceding month's income regardless of the number of cases for which the prisoner owes filing fees, or must the prisoner pay 20% of his preceding month's income for each case for which he owes a filing fee?

ADDITIONAL PARTIES TO THE PROCEEDING BELOW

Appellants

Jeremy Brown (Federal Prisoner: 31123-074)

Andrew Wesley Hobbs (Federal Prisoner: 30723-077)

John Samuel Leigh (Federal Prisoner: 03857-087)

Jeremy Pinson (Federal Prisoner: 16267-064)

Movant

Mikeal Glenn Stine (Federal Prisoner: 55436-098)

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OPINIONS BELOW

The August 5, 2014 opinion of the U.S. Court of Appeals for the District of Columbia Circuit is published at 761 F.3d 1 (D.C. Cir. 2014). That opinion is reproduced in the Appendix to the Petition ("Pet. App.") at 1a-18a. The D.C. Circuit's orders denying rehearing and rehearing *en banc* are unpublished and are reproduced at Pet. App. 23a-25a.

JURISDICTION

Petitioner Antoine Bruce seeks review of the August 5, 2014 decision of the court of appeals denying his request to stay the collection of filing fees. A timely petition for rehearing and rehearing *en banc* was filed, which the court of appeals denied on October 22, 2014. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in the Appendix to this Brief.

STATEMENT

A provision of the Prison Litigation Reform Act ("PLRA"), codified at 28 U.S.C. § 1915(b)(2), requires a prisoner suing *in forma pauperis* ("IFP") – after paying an initial partial filing fee – to make monthly installment payments of 20% of the prisoner's monthly income until the filing fee is paid in full. An open and recurring question, deeply dividing the lower courts, is how those monthly installment payments are to be collected when an IFP prisoner owes filing fees for more than one case. Does § 1915(b)(2) permit a pris-

oner to make a single 20% payment each month, with the prisoner paying off each filing fee sequentially in the order in which it was incurred (known as the "per-prisoner" or "sequential" approach)? Or does the statute require the prisoner to make a separate 20% payment each month for each case filed, with the prisoner simultaneously making payments toward all of his existing obligations (known as the "per-case" or "simultaneous" approach)? The answer, upon consideration of the statute's text, structure, and purpose, canons of statutory construction, and administrative feasibility, is the per-prisoner, sequential approach.

A. The PLRA Statutory Framework

The federal IFP statute, in effect in one form or another since the late nineteenth century, and currently codified at 28 U.S.C. § 1915, generally permits courts to waive a filing fee for an indigent litigant seeking to commence a lawsuit or appeal. In 1996, Congress enacted the PLRA (Pub. L. No. 104-134, 110 Stat. 1321-66) and substantially amended § 1915 as it relates to indigent prisoners. In so doing, it hoped to reduce the volume of frivolous prisoner lawsuits, while at the same time ensuring that prisoners remained able to file meritorious claims. *See Jones v. Bock*, 549 U.S. 199, 203-04 (2007); *see also infra* pp. 35-36. The PLRA provisions most relevant to this case fall into four categories: (1) a requirement for payment of an initial partial filing fee; (2) an installment-payment requirement for satisfaction of the remainder of the filing fee and of any costs awarded in the case; (3) tools to control specific abusive filers or filings; and (4) safety-valve provisions.

1. *Initial Partial Payment of Filing Fee*. With the PLRA, Congress revoked for indigent prisoners the forgiveness of federal filing fees enjoyed by all other indigent persons. Instead, indigent prisoners "shall be required to pay the full amount of the filing fee," albeit over time. 28 U.S.C. § 1915(b)(1). A first, partial payment comes at the time of the commencement of the case or docketing of an appeal. Section 1915(b)(1) states that, at the start of the "civil action or appeal," the court:

> shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
>
> (A) the average monthly deposits to the prisoner's account; or
>
> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Id. § 1915(b)(1)(A)-(B).

Immediate payment of this initial partial filing fee is excused in one circumstance: when the greater of the amounts calculated under (A) or (B) is zero. Congress authorized the filing of the suit or appeal in that situation when it provided elsewhere that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." *Id.* § 1915(b)(4).

2. *Monthly Installment Payments*. After payment of the initial partial filing fee, Congress required IFP prisoners to pay the remainder through monthly installment payments. Section 1915(b)(2), which is at the center of the question presented, provides:

> After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

Id. § 1915(b)(2).

The statute then ties the payment of any costs taxed to the prisoner at the close of the action or appeal to the methodology adopted in § 1915(b)(2). A prisoner losing the case or appeal "shall be required to pay the full amount of the costs ordered," and he "shall be required to make payments for costs . . in the same manner as is provided for filing fees under subsection (a)(2) [sic: (b)(2)]." *Id.* § 1915(f)(2)(A)-(B).[1]

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[1] Though § 1915(f)(2)(B) refers to "subsection (a)(2)," numerous courts have recognized that "Subsection (f)(2)(B)'s reference to subsection (a)(2) is a scrivener's error as the reference should be to subsection (b)(2)." *Johnson v. McNeil*, 217 F.3d 298, 300 (5th Cir. 2000); *accord Talley-Bey v. Knebl*, 168 F.3d 884, 886-87 (6th Cir. 1999). In fact, subsection (a)(2) in § 1915 does not deal with payment methodologies at all, but with evidence a prisoner must submit to substantiate IFP status. *See* 28 U.S.C. § 1915(a)(2) (prisoner "shall submit a certified copy of the trust fund account statement . . ").

3. *Controls for Specific Abusive Filings and Filers.* Section 1915 contains tools to be used in individual instances to deal with abusive filings and abusive filers. In a command applicable to both indigent non-prisoners and prisoners, the statute requires courts to "dismiss the case at any time if [it] determines that the action or appeal is (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Another provision, also operative for non-prisoners and prisoners, states that an "appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *Id.* § 1915(a)(3).

With respect to abusive prisoner-filers, the PLRA created the so-called "three-strikes" rule. *See id.* § 1915(g). Under this provision, a court may not afford IFP status to a prisoner who "has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.*; *see Coleman v. Tollefson*, 135 S. Ct. 1759, 1762 (2015). The three-strikes provision includes an exception, allowing IFP status if "the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).[2]

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[2] Though not contained in § 1915, an invigorated administrative exhaustion requirement, codified at 42 U.S.C. § 1997e, was adopted in the PLRA that seeks, in a more general manner, to screen out non-meritorious prisoner suits. *See Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (describing the PLRA's exhaustion requirement as a "centerpiece" of the PLRA's effort to reduce the volume of prisoner

4. *Safety-Valve Provisions*. Several measures in the PLRA – some already mentioned – seek to ensure that its other provisions do not impede a prisoner's right of access to the courts or otherwise engender overly harsh results. As noted, the statute does not preclude the filing of a lawsuit even if the prisoner has no funds to pay the initial partial filing fee. *See* 28 U.S.C. § 1915(b)(4). With respect to the monthly installments for filings fees and costs, the obligation to make payments is triggered only if the amount in the prisoner's account exceeds $10.00. *See id.* § 1915(b)(2). And the three-strikes rule contains the aforementioned safety-valve for prisoners who face imminent danger of serious physical harm. *See id.* § 1915(g).

Still other provisions prohibit the enhancement of fees for prisoners over non-prisoners: "In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." *Id.* § 1915(b)(3). Similarly, "[i]n no event shall

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litigation). Under the PLRA's exhaustion requirement, a prisoner may not bring any action "with respect to prison conditions" under 42 U.S.C. § 1983 "or any other Federal law" until "such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Another PLRA screening measure mandates that federal courts review, upon filing, a prisoner "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity" and "dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . or . . . seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(a)-(b).

the costs collected exceed the amount of the costs ordered by the court." *Id.* § 1915(f)(2)(C).

B. Proceedings Below

Petitioner is prisoner Antoine Bruce, currently serving a fifteen-year sentence and incarcerated at the U.S. Penitentiary, Administrative Maximum Facility in Florence, Colorado. *See* Respondents' Br. in Resp. to Pet. for Cert. ("Resps. Cert. Br.") at 16; Bur. of Prisons, *Inmate Locator*, http://www.bop.gov.inmateloc (last visited Aug. 10, 2015) (BOP Register No. 35363-007). But the proceedings below actually commenced with the filing of a lawsuit by another federal prisoner, Jeremy Pinson, litigation that Bruce attempted to join as a co-plaintiff.

In 2009, Pinson filed suit in the U.S. District Court for the District of Columbia, challenging as unconstitutional the conditions of his confinement at the Federal Correctional Institution in Talladega, Alabama, where both he and Bruce were incarcerated at the time. *See* Pet. App. 2a. Pinson named as defendants various Bureau of Prison ("BOP") officials. Pinson challenged the BOP's guidelines and actions associated with the creation of "Special Management Units," or "SMUs." "SMUs house gang-affiliated and other disruptive inmates who present unique security concerns." Pet. App. 3a (citing BOP Program Statement 5217.01 (Nov. 19, 2008)). Pinson alleged that the guidelines were illegal because they did not contain adequate safeguards to ensure that rival gang members were not placed in the same SMU; he further maintained that the defendant BOP officials had, in fact, placed him in imminent danger by housing him with rival gang members. Joint Appendix ("J.A.") at 24-26.

In January 2010, immediately after docketing Pinson's complaint, the district court ruled that venue was improper in the District of Columbia and transferred the case to the Northern District of Alabama. J.A. 29-30. The transfer order was signed on January 19, 2010, and entered in the docket on January 21, 2010. According to Pinson, on or about January 11, 2010 (therefore, before the transfer order), and then again on January 22, 2010, he and several other prisoners – including Bruce – sought to file a "Motion For Leave to Join and Amend." J.A. 60-61. On both occasions, the district court, Pinson alleged, returned the motions to Pinson, and the motions were not entered on the district court's docket. *Id.*

In the district court, Pinson moved to proceed IFP. Pet. App. 3a. But the district court stated that Pinson's IFP application should be decided by the transferee court. *Id.*

Pinson then, after unsuccessfully moving for reconsideration in the district court of the venue transfer, filed a notice of appeal contesting the transfer order. J.A. 34. The D.C. Circuit treated the notice of appeal as a mandamus petition. J.A. 35. Pinson and other federal prisoners, including Bruce, then filed an "Amended Notice of Appeal" in the district court, which the court of appeals treated as a supplement to the mandamus petition. J.A. 63-65, 68-69.

In the court of appeals, Pinson and Bruce (and others) moved to proceed IFP pursuant to § 1915(b). J.A. 37-57, 80-105. Pinson also moved "to stay any collection of filing fees until he completed payment of filing fees owed in other cases he had brought." Pet.

App. 4a. Later, Bruce joined Pinson's motion to stay the collection of filing fees. *Id.* at 5a; J.A. 106.

In the decision on review here, the D.C. Circuit first denied Pinson's IFP application. It was "undisputed that Pinson had accumulated three strikes," and the D.C. Circuit found that Pinson failed to meet the three-strike rule's exception for imminent danger of serious physical injury. Pet. App. 6a. The court of appeals, however, did provide Pinson time to pay his portion of the filing fee for the mandamus petition up front if he chose to proceed with the mandamus petition. *Id.* at 8a.

The court of appeals then granted IFP status to Bruce, who had "not accumulated three strikes." *Id.*[3] The court, however, held that Bruce lacked standing to challenge the district court's transfer of the underlying case to the Northern District of Alabama. *Id.* at 9a-10a.

The D.C. Circuit next addressed the manner in which filing fees should be collected from Bruce (an issue that was moot as to Pinson in light of the court of appeals's conclusion that he could not proceed IFP). *Id.* at 11a-18a. The court of appeals began by delineat-

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[3] Respondents do not dispute the court of appeals's finding that Bruce lacks three strikes. *See* Resps.' Cert. Br. at 15 n.7. As also noted by Respondents, Bruce has filed several federal cases. *See id.* (citing *Bruce v. Alvarez*, No. 1:14-CV-03232 (D. Colo. filed Nov. 26, 2014); *Bruce v. Wilson*, No. 1:13-CV-00491 (D. Colo. filed Feb. 25, 2013); *Bruce v. Holbrook*, No. 1:10-CV-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce v. Chambers*, No. 3:10-CV-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce v. Reese*, No. 1:09-CV-02378 (N.D. Ala. filed Nov. 24, 2009)).

ing the difference between the per-prisoner and per-case approaches. "Under the 'per prisoner' cap, a prisoner would satisfy his obligations sequentially, first fully satisfying his obligation for his earliest case before moving on to the next one, at no time making any payment that would take his cumulative payments for that month beyond an overarching twenty-percent ceiling." *Id.* at 12a-13a. The per-case approach "requires a prisoner to make a separate installment payment for *each* filing fee incurred as long as no *individual* payment exceeds twenty percent of his monthly income." *Id.* at 13a (emphasis added). "Under the 'per case' cap, a prisoner simultaneously makes payments towards satisfaction of all of his existing obligations," with potentially 100% of his monthly income being taken if there are five filing fees outstanding. *Id.*

From these two approaches, the court of appeals adopted the per-case approach, thus concluding that Bruce must pay his part of the filing fee associated with the mandamus petition simultaneously with previously incurred filing fees. *Id.* at 11a-18a. The court of appeals focused on the "overall statutory scheme" of § 1915, and said that, in its view, every provision of § 1915, including the 20% installment provision, "appl[ies] to *each action or appeal* filed by a prisoner." *Id.* at 14a (emphasis in original; internal quotation marks and citation omitted). The court of appeals especially focused on what it saw as a tie between subsections (b)(1) and (b)(2). It found that, "[b]ecause the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem." *Id.* at 15a (quoting *Torres v. O'Quinn*, 612 F.3d 237, 256 (4th Cir.

2010) (Neimeyer, J., dissenting)). And "[g]iven that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Id.* The D.C. Circuit also reasoned that the per-case approach comports with the PLRA's underlying purpose, which it characterized as deterring prisoners from filing frivolous lawsuits. *Id.* at 17a.

The D.C. Circuit's adoption of the per-case approach tapped into a deep division among the circuits on how to interpret § 1915(b)(2)'s 20% installment-payment requirement. Four other circuits agree with the D.C. Circuit that the per-case approach applies. *See Atchison v. Collins*, 288 F.3d 177 (5th Cir. 2002); *Lefkowitz v. City-Equity Grp., Inc.*, 146 F.3d 609 (8th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429 (7th Cir. 1997); *see also Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821 (10th Cir. 2010). Three circuits have adopted the per-prisoner approach, holding that § 1915(b)(2) permits a prisoner to make a single 20% payment each month, with the prisoner paying off each filing fee sequentially in the order in which it was incurred. *See Siluk v. Merwin*, 783 F.3d 421 (3d Cir. 2015); *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264 (2d Cir. 2001).[4]

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[4] The court of appeals's disposition of the IFP applications in this case touches on two other conflicts among the circuits regarding § 1915. The D.C. Circuit, like some, but not all, of its sister circuits, considers a mandamus petition to be a "civil action" or "appeal" to which the PLRA applies, and therefore applied § 1915(b)(2)'s installment-payment approach to Bruce's filing. *See In re Grant*, 635 F.3d 1227, 1230 (D.C. Cir. 2011); *accord In re*

SUMMARY OF ARGUMENT

I. In a case involving statutory construction, such as this one, the starting point is the statute's text. Here, the text points to the per-prisoner approach. The key sentence in § 1915(b)(2) states that the agency with custody of the prisoner shall forward the 20% monthly payments "to the clerk of the court [singular] each time the amount in the account exceeds $10 until the filing fees [plural] are paid." 28 U.S.C. § 1915(b)(2). Congress's use of the singular "clerk of the court," but the plural "filing fees," evinces that a single clerk's office is to receive monthly payments even when there are numerous "filing fees" owed, which is consistent with the per-prisoner approach but not the per-case approach. This Court last Term in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), found Congress's use of a particular singular in the PLRA to inform the result when construing another of the PLRA's provisions, the three-strikes provision, 28 U.S.C. § 1915(g). No less than in *Coleman*, Congress's use here of singulars and plurals should be deemed deliberate and purposeful.

Stone, 118 F.3d 1032, 1034 (5th Cir. 1997); *Martin v. United States*, 96 F.3d 853, 854-55 (7th Cir. 1996); *In re Tyler*, 110 F.3d 528, 529 (8th Cir. 1997); *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996); *but see Madden v. Myers*, 102 F.3d 74, 78 (3d Cir. 1996); *In re Nagy*, 89 F.3d 115, 117 n.1 (2d Cir. 1996). Additionally, Respondents noted a conflict among the circuits on whether, under the PLRA, IFP prisoners joining collectively in a single action must each pay the full filing fee or whether, alternatively, they proportionately share a single filing fee (as the D.C. Circuit found here). *See* Resps.' Cert. Br. at 7 n.2 (citing conflicting decisions). Neither side has sought review of these other circuit-splitting issues.

II. The PLRA's structure and the statutory context confirm that Congress intended the per-prisoner approach. *First*, had Congress contemplated the per-case approach, it would have been clear about it, but courts to have addressed the issue agree that the statute on its face does not expressly adopt the per-case approach. Clarity on the face of § 1915(b)(2) would be expected because the supposed advantage of the per-case approach is to better deter prisoners from filing frivolous cases; yet, if the statute gives no clear warning of the consequence of filing, no deterrence can occur.

Second, it makes no sense to think that Congress expected the per-case approach when it nowhere provided guidance as to what happens once the fifth filing fee is incurred. At that point, under the per-case approach, 100% of the prisoner's income will be taken, and a whole slew of perplexing questions arises as to what occurs next.

Third, the per-case approach is difficult to harmonize with the PLRA's costs provision, which says that costs may be awarded against a prisoner "in the same manner" as for filing fees under § 1915(b)(2). 28 U.S.C. § 1915(f)(2)(B). Once a prisoner hits five filing fees, all of her previous month's income will be garnished under the per-prisoner approach, leaving nothing for costs, notwithstanding that costs are to be treated the same as filing fees.

Fourth, the per-prisoner approach follows from the direction in § 1915(b)(2) that no 20% installment payment shall occur if the prisoner lacks $10 in his account. The reason for that threshold is so that the prisoner may at least have some measure of funds for minimal amenities. Illogically, the per-case approach

would take potentially 100% of the prisoner's income once $10 is surpassed, even though the very reason for the $10 threshold is to leave the prisoner a minimal monetary cushion.

Fifth, the contextual reason cited by courts to have adopted the per-case approach – namely, that § 1915(b)(2) is inextricably bound to § 1915(b)(1), which operates on a per-case basis – is unpersuasive. Subsection (b)(2) is incongruous with subsection (b)(1), because it uses a different payment methodology, a different collection official, and refers to "filing fees" not "filing fee."

III. The per-prisoner approach is more compatible with the PLRA's statutory purposes. The goal of the PLRA was not to deter frivolous prisoner lawsuits at all cost, but to curb frivolous prisoner cases while also ensuring that prisoners could still bring meritorious claims. By creating the prospect of taking a fixed 20% of a prisoner's income each month and placing new filing fees and costs incurred in line to be paid over a progressively increasing period of time, the per-prisoner approach makes the prisoner think twice before filing a potentially frivolous action, but does not threaten such a significant sting as to thwart meritorious claims from being brought. In contrast, the per-case approach's threat of possibly 100% of monthly income being at risk eventually due to filing fees and costs is a draconian penalty more likely to prevent the filing of even meritorious cases. Additionally, the added measure of deterrence ascribed to the per-case approach is unnecessary given the success of the PLRA's other tools for limiting frivolous prisoner lawsuits.

IV The per-prisoner approach follows from the canon of statutory construction whereby the Court seeks to avoid constitutional questions. The per-case approach implicates the constitutional right of access to the courts to raise claims involving fundamental rights, a constitutional right that prisoners, like everyone else, enjoy. Under the per-case approach, the prisoner is subject potentially to a 100% recoupment of his income each month, leaving nothing for incidentals like phone calls to family members, postage, or reading materials. Faced with the choice of bringing a legal claim involving a fundamental right, or purchasing amenities to make prison life more bearable, the prisoner may be relegated to choosing the latter. As a result, if § 1915(b)(2) is read to require such choosing – which it would, if the per-case approach applies – it impermissibly may chill the right of access to the courts. Because the per-prisoner approach is an alternative construction of § 1915(b)(2) that avoids the constitutional problem, the Court should choose it.

V. Congress likely intended the per-prisoner approach because it is more feasible administratively. The per-case approach sets up absurd situations where prison officials are required to divide five ways, and send to five different court clerks, miniscule amounts – amounts that might be less than the postage stamp necessary to send the payment to the clerk. Furthermore, the per-case approach is more complicated than the per-prisoner approach because, once a sixth filing fee or costs award exists, it encompasses the per-case approach for the first five filing fees or costs, and then a sequential methodology like the per-prisoner approach for the sixth and upward filing fees and costs. And the per-case approach visits administrative diffi-

culties on state prison officials in particular, who in addition to navigating the complexities and absurdities presented by the per-case approach for federal filing fees and costs may additionally have to manage collections for state filing fees and other deductions state laws impose on prisoners.

ARGUMENT

I. THE PLRA'S TEXT REQUIRES THE PER-PRISONER APPROACH

Because the petition presents a question of statutory interpretation, the analysis "start[s], of course, with the statutory text." *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006); *accord Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013). And "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am.*, 549 U.S. at 91. Here, the text points to the per-prisoner, sequential approach for the payment of the 20% monthly installments on multiple outstanding filing fees. Indeed, adoption of the per-case approach would require that a particular term in § 1915(b)(2) stated in the singular be read against its ordinary meaning as a plural, or that a term in the plural be read as a singular.

To recap, § 1915 as it relates to prisoners begins by requiring any prisoner who brings a civil action or appeal IFP to pay, when commencing the action or appeal, an initial partial filing fee. This initial partial filing fee is assessed and collected by the court in which the civil action or appeal is brought. *See* 28 U.S.C. § 1915(b)(1) (the "court shall assess and, when funds exist, collect an initial partial filing fee").

There is no dispute among the parties that "the initial partial filing fee accrues in each case, regardless of the number of suits initiated." Pet. App. 15a.

After the initial partial filing fee is collected by the court, however, the next provision – § 1915(b)(2) – governs how the remainder of a prisoner's filing-fee obligations will be paid. Section 1915(b)(2) provides that, "[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding monthly's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2). The key provision of the statute then provides: "The agency having custody of the prisoner shall forward payments from the prisoner's account *to the clerk of the court* [singular], each time the amount in the account exceeds $10 until *the filing fees* [plural] are paid." *Id.* (emphasis added).

The use of the singular words "clerk" and "court," but the plural "filing fees," indicates that a single clerk s office is to receive monthly payments even when there are numerous "filing fees" outstanding, a position consistent with the per-prisoner methodology of paying one court at a time (but sequentially) when there are filing fees outstanding from several courts. In contrast, if Congress had intended for prisoners with multiple filing fees to pay the filing fees simultaneously, it would have directed the prisoner's custodian to forward payments to *each* clerk of the court to which filings fees are owed, not to a single "clerk of the court" when "filing fees" are owed. Or Congress could have left its hand untipped as to one approach or the other, by putting both "clerk of the court" and "filing fee" in the singular in § 1915(b)(2). It

chose neither of these latter paths, instead opting to state that a single "clerk of the court" gets paid, even when there remains more than one filing fee – thus, "filing fees' – owed.

It is fair to give these terms their ordinary meanings – that is, "clerk of the court" meaning one entity, and "filing fees" meaning more than one. Congress was attuned to the importance of distinguishing between singulars and plurals in the statute. In § 1915(b)(1), identifying the prisoner's obligation each time a civil action or appeal is filed, the statute refers to a singular filing fee. *See id.* § 1915(b)(1) ("the prisoner shall be required to pay the full amount of a filing fee"); *id.* (the "court shall assess and, when funds exist, collect an initial partial filing fee"). Yet, when authorizing the prison custodian's monthly withdrawal from the prisoner's account, payments are to be made until the "filing fees" are paid. Moreover, Congress plainly understood that a prisoner may owe multiple filing fees, for the entire purpose of the PLRA is to provide rules for prisoners who file multiple lawsuits (including the three-strikes provision, *id.* § 1915(g)), making the use of the plural "filing fees" seem knowing and purposeful. Finally, § 1915(b)(2) appears to be a carefully written measure, including specifics like "clerk of the court" (not just "court" as in § 1915(b)(1)), "the agency having custody of the prisoner" (as the collecting official), and a special $10-rule for triggering monthly payments. Consistent with this detail, the provision's singulars and plurals should not be ignored.

Earlier this year, the Third Circuit read § 1915(b)(2) in a similar manner. As it explained,

"[n]othing in subsection (b)(2)'s language, requiring monthly payments to 'the clerk of the court, until the filing fees are paid[,]' suggests that Congress intended that 'the clerk' simultaneously refer to two different clerks in two different courts." *Siluk v. Merwin*, 783 F.3d 421, 429 (3d Cir. 2015). "Congress could certainly have required monthly payments to multiple clerks of different courts, or the same clerk for multiple filings until each filing fee is paid. Congress did not use language that would have achieved that result." *Id.*

This Court's decision just last Term in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), likewise confirms that the singulars and plurals in the PLRA can be determinative. There, in considering whether § 1915(g)'s three-strikes rule allows for the issuance of a strike from a district court filing while the district court's decision remains subject to appeal, the Court insisted on a "literal reading" of § 1915. *Id.* at 1764. At one point in its opinion, the Court focused on the fact that the three-strikes rule, in assessing a strike, "refers to whether an action or appeal 'was dismissed.'" *Id.* at 1763 (quoting 28 U.S.C. § 1915(g)). The Court then said that "§ 1915 itself describes dismissal as an action taken by a *single* court, not as a sequence of events involving multiple courts." *Id.* (emphasis added). In this regard, the Court emphasized the following instruction in § 1915(e)(2): "*[T]he court* shall dismiss the case at any time if *the court* determines that – (A) the allegation of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted." *Id.* (emphasis in original). Just as Congress's choice of singular or plural in § 1915(e)(2) signaled the result in

Coleman, so too its use of the singular "clerk of the court" and plural "filing fees" makes the difference here: it shows that – as is compatible only with the per-prisoner approach – a single "clerk of the court" receives the 20% payment when there are multiple "filing fees" outstanding.

Courts of appeals interpreting the PLRA to favor the per-case, simultaneous approach have not held that the text of § 1915(b)(2) – standing alone – compels that approach. *See, e.g., Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x. 821, 829 (10th Cir. 2010) ("[t]he pertinent language of § 1915(b)(2), considered in isolation, does not provide a clear directive regarding application of the twenty-percent limitation"); *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997) ("the statute does not tell us whether the 20 percent-of-income payment is per case or per prisoner"). Instead, circuits adopting the per-case approach have relied, sometimes exclusively, on statutory purpose arguments (*Lefkowitz v. City-Equity Grp., Inc.*, 146 F.3d 609, 612 (8th Cir. 1998); *Newlin*, 123 F.3d at 436), or, in addition to invoking the statutory purpose, have treated § 1915(b)(1)'s requirement regarding the initial partial filing fee on a per-case basis as controlling. *See Christensen*, 374 F. App'x at 830-31; *Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002); Pet. App. 14a-16. But the text comes first, and here it supports the per-prisoner approach.

Respondents' only response to the textual argument so far has been to say that, in "assum[ing] the term 'fees' must refer to multiple cases, [Petitioner] overlooks the fact that several different types of fees can apply in a single case." Resps. Cert. Br. at 9 n.3.

Hence, Respondents apparently believe that Congress, in § 1915(b)(2), was not referring to a single court receiving the 20% payment when there are filing fees owed for the commencement of multiple cases, but to a single court receiving a 20% payment to cover all of the various fees supposedly owed when starting a case, which is a reading of the text that would not be incompatible with the per-case approach.

However, Respondents' argument cannot get past other text in the statute. Other subsections show that Congress bundled – definitionally, in effect – *all* fees owed at the start of a case into the term "filing fee." For instance, § 1915(b)(1) states that the court in which a case is filed shall "collect, as a partial payment of *any* court fees required by law, an initial partial *filing fee*" under the methodology that then follows. 28 U.S.C. § 1915(b)(1) (emphasis added). Similarly, the subsection prohibiting enhancement of the filing fee for indigent prisoners provides that "the *filing fee* collected [shall not] exceed the amount of *fees* permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." *Id.* § 1915(b)(3). Accordingly, with all fees at the start of the case constituting a single "filing fee," Congress could not have meant the plural "filing fees" in § 1915(b)(2) to mean a single case's filing fee plus any other start-up fees associated with the case, but had to have intended the filing fees associated with more than one case.

II. THE STATUTORY CONTEXT CONFIRMS THAT CONGRESS INTENDED THE PER-PRISONER APPROACH

In a statutory-construction case, it is, of course, also appropriate to "turn to the broader structure of the Act to determine the meaning" of relevant terms. *King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483, 498 (2015). "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). The context can help "decid[e] whether the [statutory] language is plain." *King v. Burwell*, 192 L. Ed. 2d at 494. Here, the statutory context in which § 1915(b)(2) appears confirms what § 1915(b)(2)'s text instructs: the per-prisoner, sequential approach. In fact, in determining whether the per-prisoner or per-case approach should govern, what is missing from the statute's structure is as telling as what is there.

A. If Congress had wished to impose the per-case approach, it seems likely – in light of the purpose the per-case approach supposedly furthers – that Congress would have done so explicitly. Courts adopting the per-case approach are adamant, as the D.C. Circuit was here, that simultaneous payment of multiple filing fees is necessary "'to deter prisoners from filing frivolous lawsuits which waste judicial resources and compromise the quality of justice enjoyed by the law-abiding population.'" Pet. App. 17a (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011)); *see also Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997). "Capping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits

filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action." Pet. App. 17a. While we discuss at greater length later the PLRA's purposes and how the per-prisoner approach better comports with the statute's objectives, it is enough for argument's sake to assume for the moment that the PLRA's object was to deter, in the strongest way possible, prisoners from filing frivolous lawsuits.

But deterrence at the amplified level envisioned by courts subscribing to the per-case approach could only occur if a prisoner had clear warning that each additional case or appeal would take an additional 20% from the prisoner's monthly income. In other words, Congress would need to have used words plainly to impart to the prisoner that the filing of one case leads to a loss of 20% of monthly income, the filing of two to 40%, and the filing of five or more to 100%, if it wanted such ever-increasing monthly garnishments to make the prisoner "'think twice'" before filing the next lawsuit. *Tucker v. Branker*, 142 F.3d 1294, 1296 (D.C. Cir. 1998) (quoting 141 Cong. Rec. S7,526 (daily ed. May 25, 1995) (statement of Senator Kyl)). Yet, as noted, one thing about which the circuits largely agree regarding § 1915(b)(2) is that the text of the provision does *not* on its face instruct the per-case approach. *See supra* p. 20. What is worse, even after considering all manner of textual, contextual, and policy arguments, the courts of appeals are in deep conflict on the right reading of § 1915(b)(2).

Given the absence of clarity in the statute as to the per-case approach, § 1915(b)(2) can be viewed in one of two ways: either Congress intended to warn prisoners that they face 100% recoupment, and it did so by using

language that could not be deciphered by several federal appellate courts; or Congress intended to warn prisoners that they face the prospect of losing exactly what the statute says – "20 percent of the preceding month's income." 28 U.S.C. § 1915(b)(2). The latter option ascribes "rational" action to Congress, which is the preferred course. *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1781 (2013).

B. It also makes little sense to believe that Congress would have implemented a simultaneous collection regime without addressing the most obvious question raised by that approach, which is: what happens when a prisoner who owes five filing fees (and therefore has 100% of his income withheld) files another lawsuit? As evidenced by the three-strikes provision in § 1915(g), Congress contemplated that some prisoners would file numerous lawsuits. And if Congress had envisioned an additional 20% of a prisoner's income being taken monthly for each filing fee owed, it would have occurred to Congress that such an approach would run its course by the time of the fifth filing.

Had Congress planned on allowing prisoner monthly payments to climb to 100%, it would have offered some explanation as to what would happen next. Does the per-case approach then revert to the per-prisoner approach, meaning that the sixth filing fee and upward are subject to sequential payment and replace one of the first five filing fees in the mix only after one of the first five is fully paid? As it is, the statute is silent on that point, likely because Congress never planned on withholding more than 20% of any prisoner's income. Again, the statutory structure – in

particular, a missing instruction otherwise necessary to implement a workable per-case approach – points to the per-prisoner approach.[5]

C. The per-case approach is difficult to harmonize with § 1915(f). Under that subsection, a court may, where appropriate, render a judgment for costs against the prisoner. Section 1915(f)(2)(B) states that "[t]he prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection[(b)](2)." 28 U.S.C. § 1915(f)(2)(B). If Congress had envisioned 100% of some prisoners' incomes being withheld for the payment of filing fees, as is the situation under the per-case approach when five or more filing fees exist, then there would be no room for the payment of costs. The agency with custody of the prisoner would need to decide whether filing fees take precedence over costs,

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[5] One circuit adopting the per-case approach has suggested that "[f]ive suits or appeals mean that the prisoner's entire monthly income must be turned over to the court until the fees have been paid – though by then a prisoner is likely to have three strikes and to owe all future filing fees in full, in advance." *Newlin*, 123 F.3d at 436. But it is not credible to attribute the failure in the statute to address what happens to the sixth filing fee under the per-case approach to a Congressional vision that prisoners who file more than five cases inevitably will have accumulated three strikes. It is not unreasonable to think a prisoner serving a lengthy sentence may legitimately, over the course of serving the sentence, file five or more civil actions or appeals to challenge the conditions of his confinement or other prison-related matters. *See also infra* p. 30 (noting how the commencement of a single complaint can lead to numerous filing fees, when appeals are included). In fact, Respondents concede that Bruce has filed more than five cases (including this one) and have not contended that he has three strikes. *See supra* p. 9 n.3.

such that filing fees must always be paid off first, or whether an additional 20% of income must be put toward each filing fee and each costs award in the order in which that payment obligation was incurred. While the latter approach may be slightly more logical, it presents its own complexities under the per-case approach. Some prisoners will end up paying odd combinations of fees and costs – such as three fees and two costs, or two fees and three costs (raising the question as to whether they are then being collected "in the same manner"). And because an award for costs can be large, and therefore take much longer to pay off than a filing fee, some prisoners may end up paying toward four or five costs while later-in-time filing fees await payment.

It seems highly unlikely that Congress enacted a system with each of those possible outcomes, all without uttering a word about them in the statute. And in any event, given the various scenarios regarding filing fees and costs under the per-case approach, it appears impossible, under the per-case approach, to treat filing fees and costs "in the same manner," which is what § 1915(f)(2)(B) requires. On the other hand, the treatment of filing fees and costs under the per-prisoner approach is obvious and administratively simple. Twenty percent of the prisoner's income goes toward filing fees, and another 20% goes toward costs. When the prisoner has multiple obligations of either sort, they are paid off sequentially – Filing Fee #2 following Filing Fee #1, and Cost #2 following Cost #1.[6]

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[6] This is exactly the approach to filing fees and costs adopted by the Second Circuit, a per-prisoner circuit. *See Whitfield v. Scully*, 241 F.3d 264, 277-78 (2d Cir. 2001).

D. The per-prisoner approach is supported by § 1915(b)(2)'s requirement that payments be collected only when "the amount in the [prisoner's] account exceeds $10." 28 U.S.C. § 1915(b)(2). Conversely, one of the principal flaws of the per-case approach is that it would undercut the function of this $10-clause. To see why, it is important to understand how the $10-rule, properly applied, functions in practice.

Under § 1915(b)(2), if a prisoner's account never reaches $10.01 or more in a given month, that prisoner makes no installment payments. *See Murray v. Dosal*, 150 F.3d 814, 818 (8th Cir. 1998) ("[P]ayments are extracted only in the months when the prisoner's trust fund account exceeds ten dollars"); *Chachere v. Barerra*, 135 F.3d 950, 951 (5th Cir. 1998) (acknowledging that "the account balance must exceed $10 before a deduction may be made."); *Hampton v. Hobbs*, 106 F.3d 1281, 1284-85 (6th Cir. 1997) ("If the prisoner has less than ten dollars ($10) in his account, no payment is required for that month."); *Shabazz v. Parsons*, 127 F.3d 1246, 1248 (10th Cir. 1997) (same).

Once the amount in a prisoner's account exceeds $10, the prison may deduct the required installment payment even if the result is that the prisoner's account is reduced to less than $10. Consider a prisoner who has one cent in his account and then earns $10.00 in a given month, such that he has $10.01 at the time his installment payment (for a single case) comes due the next month. The prison will withdraw $2 (20% of the preceding month's income) and forward it to the clerk of the court, leaving the prisoner with $8.01 in his account. The courts of appeals are in agreement that this is the correct reading of the $10-provision.

See McGore v. Wrigglesworth, 114 F.3d 601, 606-07 (6th Cir. 1997) ("No violation of the statute occurs if the application of the twenty-percent rule reduces the balance of the account below ten dollars. So long as the balance of the account is above ten dollars when the withdrawal is made, the requirements of § 1915(b)(2) are satisfied."); *see also Siluk v. Merwin*, 783 F.3d 421, 426 (3d Cir. 2015) (finding that deduction may be made below the $10-mark "if an inmate had $10 in his or her account on the first of the month"); *Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010) (same); *Johnson v. McNeil*, 217 F.3d 298, 302 (5th Cir. 2000) ("It is of no consequence that [installment payment] deductions might cause the account balance to drop below $10.").

The obvious function of the $10-threshold is to ensure that prisoners will have at least a small amount of discretionary income after deductions for filing fees and costs. Indeed, there is no other purpose that the threshold could have been intended to serve. It does not make administration of the PLRA easier than it otherwise would be. The simpler approach would be to allow the agency with custody of the prisoner to deduct 20% of the prisoner's income from the preceding month, no matter what the circumstances. Instead, § 1915(b)(2) requires prisons to monitor their prisoners' accounts and make deductions during certain months but not others. Hence, the objective of the $10-provision, as several courts of appeals have expressed, is to "ensure that prisoners [who file lawsuits] need not totally deprive themselves of those small amenities of life which they are permitted to acquire in a prison . . . beyond the food, clothing, and lodging already furnished by the state." *Roller v. Gunn*, 107 F.3d 227, 233

(4th Cir. 1997) (internal quotation marks and citations omitted); *accord Shabazz*, 127 F.3d at 1248.[7]

When § 1915(b)(2) is viewed as a whole, one sees that the installment-payment provision and the $10-provision can be read to function harmoniously under the per-prisoner approach, but not under the per-case approach. In a per-prisoner regime, prisoners will always have at least $6.01 to spend on minor incidentals after making their installment payment, because an indigent prisoner will not have to make installment payments until he has at least $10.01 in his account, and the most that could then be deducted would be $4. Specifically, the prison could deduct $2 (20% of the prisoner's assets, assuming he earned all $10.01 during the preceding month) to be paid toward filing fees under § 1915(b)(2), and, if the prisoner owed costs, another $2 (*i.e.*, another 20%) under § 1915(f)(2)(B). After the payments, the prisoner would be left with $6.01 to spend on phone calls, stamps, and other items of his choosing.

Under the per-case approach, the purpose of the $10-provision is undermined. If the same prisoner from the previous example owed multiple filing fees and costs, his account would be reduced below $6.01,

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[7] The $10-provision cannot be explained as an effort simply to avoid administrative inconvenience for those calculating and collecting the 20% installment payments when the prisoner's income is exceedingly low. If that were Congress's intent – namely, "don't bother when the administrative work is not worth what is to be collected" – then Congress would have included a similar minimum threshold in § 1915(b)(1) for triggering collection of the initial partial filing fee. No minimum threshold at all exists under § 1915(b)(1).

and if he owed five or more filing fees and costs (collectively), his account would be reduced to zero, leaving him no discretionary income whatsoever. Even the most prudent, non-litigious prisoners could quickly find themselves with 100% of their incomes withheld. As the Second Circuit explained, a *single* case can lead to this result. *See Whitfield v. Scully*, 241 F.3d 264, 276 (2d Cir. 2001) ("In the present case . . Whitfield's filing fees for the initial complaint and two appeals, plus the two awards of costs against him, could create five encumbrances subject to recoupment at a total rate of 100 percent."). But the existence of the $10-rule shows Congress wanted prisoners to be left with some discretionary income after making PLRA installment payments.

Just as damaging to Respondents' cause, the $10-provision of § 1915(b)(2) becomes, in another sense, virtually superfluous under the per-case approach. In a per-case system, prisons must monitor prisoner accounts and wait until the accounts rise above $10, only to then (in many cases) completely drain the accounts. Congress would have saved prisons this meaningless exercise by simply allowing them to make deductions every month, no matter the amount in the prisoners' accounts.

In contrast, the procedure required by the $10-provision *always* serves a meaningful purpose under the per-prisoner approach. In a per-prisoner regime, prisons wait for the prisoner's account to grow a modest amount (to $10) so that, when the deductions are made (20% of income for fees or 40% for fees and costs), the prisoner is left with some money to spend at his discretion. The better interpretation of § 1915(b)(2)

is that Congress had an objective when it joined the 20%-provision and the $10-provision in the same subsection, as is the case under the per-prisoner, sequen- sequential approach.

E. Nor does the chief contextual argument accepted by the circuits adopting the per-case approach, including the D.C. Circuit here, withstand careful scrutiny. The D.C. Circuit thought subsections (b)(1) and (b)(2) needed to be read "in tandem" because they were "immediately" next to one another and because "the initial partial filing fee imposed in subsection (b)(1) acts as the triggering condition for the monthly installments required by subsection (b)(2)." Pet. App. 15a (internal quotation marks omitted). And because § 1915(b)(1) "applies on a per-case basis," so should – the reasoning goes – § 1915(b)(2). *Id.*; *accord Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 830-31 (10th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002).

These courts have erred "[b]y deeming § 1915(b)(2) 'simply' to 'latch on' to § 1915(b)(1)." *Torres v. O'Quinn*, 612 F.3d 237, 249 (4th Cir. 2010) (quoting dissent in case). In reality, there is, at best, limited congruity between subsections (b)(1) and (b)(2). True, they together establish the regime for the collection of a filing fee. But they use entirely different methodologies for determining their respective payments. Subsection (b)(1) calculates its 20% partial initial filing fee based on "the greater of the average monthly deposits to the prisoner's account" or "the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." 28 U.S.C.

§ 1915(b)(1)(A)-(B). Subsection (b)(2)'s installment payments are 20% of "the preceding month's income credited to the prisoner's account." *Id.* § 1915(b)(2). In addition, the collector under subsection (b)(1) is "the court" (*id.* § 1915(b)(1)); the collector under subsection (b)(2) is "the agency having custody of the prisoner." *Id.* § 1915(b)(2). Subsection (b)(1) contains no $10 threshold, while subsection (b)(2) does. And, again, subsection (b)(1) speaks of only a "filing fee" (singular), whereas subsection (b)(2) references "filing fees" (plural). *Compare id.* § 1915(b)(1) *with id.* § 1915(b)(2). Under these circumstances, bonding subsection (b)(2) to (b)(1) "bespeaks the kind of mechanical statutory interpretation" that is "unsupported by genuine analysis." *Torres*, 612 F.3d at 248, 249.

The two provisions that should be read "in tandem" are not subsections (b)(1) and (b)(2), but subsections (b)(2) and the costs provision, § 1915(f)(2)(B). In the costs subsection, Congress explicitly said costs shall be collected "in the same manner" as filing fees under subsection (b)(2). 28 U.S.C. § 1915(f)(2)(B). Nevertheless, as shown, the per-case approach (unlike the per-prisoner approach) makes the collection of costs confusing and unruly once several filing fees are outstanding, hardly allowing for an obvious answer as to how both can be collected "in the same manner."

III. THE PER-PRISONER APPROACH BEST SERVES THE PLRA'S FULL OBJECTIVES

Next turning to the "purpose" of the PLRA as a guide to its construction, *see Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006), the per-prisoner approach once again proves to be the better alternative. The Court "'cannot interpret federal statutes to

negate their own stated purposes,'" *King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483, 498 (2015) (quoting *N.Y. State Dep't of Social Servs. v. Dublino*, 413 U. S. 405, 419-420 (1973)), and here only the per-prisoner approach avoids violence to the PLRA's competing objectives – deterring frivolous prisoner lawsuits and encouraging meritorious ones. Moreover, the elevation of one of the PLRA's statutory goals, namely, the deterrence of frivolous prisoner lawsuits, over the other purposes – which is what the per-case approach seeks to do – is unnecessary in light of the statute's other ample tools for deterring frivolous prisoner actions and of evidence that the PLRA is already accomplishing its deterrence objective.

A. In the PLRA, Congress Sought to Strike a Balance Between Reducing Frivolous Prisoner Lawsuits and Preserving Prisoners' Capacity to File Meritorious Claims

Congress enacted the first IFP statute in 1892 "to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *see also* Act of July 20, 1892, ch. 209, 27 Stat. 252, 252 ("An act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court."). This legislation reflected Congress's concern that, while the wealthy were able to seek justice in the courts, the poor were being denied "entrance to them to have their rights adjudicated." H.R. Rep. No. 52-1079, at 1 (1892).

The resulting statute was broad. It provided that any citizen, upon filing the necessary written "statement under oath," could commence a lawsuit "without

being required to prepay fees or costs." Act of July 20, 1892, ch. 209, 27 Stat. at 252.

Codified principally at 28 U.S.C. § 1915(a), the current IFP statute contains the same forgiveness of filing fees and costs for non-prisoner indigents. Over time, however, Congress rolled back some of the original statute's breadth, recognizing "that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke*, 490 U.S. at 324. To prevent "abusive" and "captious" litigation, *id.*, Congress amended the statute to authorize the courts to dismiss a claim filed IFP "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1995).

Prisoners originally enjoyed the same IFP rights as non-prisoner indigents. But a sharp increase in the number of incarcerated persons post-1960, and the related rise in prisoner lawsuits – most of which "ha[d] no merit," with "many [being] frivolous" (*Jones v. Bock*, 549 U.S. 199, 203 (2007)) – moved Congress eventually to revise the IFP rules for prisoners. *See* Brian J. Ostrom, *et al.*, *Congress, Courts & Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 Notre Dame L. Rev. 1525, 1531 (2003) ("Between 1972 and 1996, the number of state prisoner § 1983 lawsuits filed in U.S. district courts increased by 1153% while the state prison population increased by 517%."); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1762 (2015) ("[A]s the years passed, Congress came to see that prisoner suits in particular represented a disproportionate share of federal filings.").

So came the PLRA. "Floor statements 'overwhelmingly suggested' that Congress sought to curtail suits qualifying as 'frivolous' because of their 'subject matter,' *e.g.*, suits over 'insufficient storage locker space,' 'a defective haircut,' or 'being served chunky peanut butter instead of the creamy variety.'" *Porter v. Nussle*, 534 U.S. 516, 522 (2002) (quoting *Nussle v. Willette*, 224 F.3d 95, 105 (2d Cir. 2000)). Thus, Congress implemented "a series of controls," *Skinner v. Switzer*, 562 U.S. 521, 535 (2011), in order "to deal with what was perceived as a disruptive tide of frivolous prisoner litigation." *Woodford v. Ngo*, 548 U.S. 81, 97 (2006).

The purpose of the PLRA, however, was not just to reduce the number of frivolous prisoner cases. The statute "also was intended to 'improve the quality'" of prisoner litigation. *Id.* at 93-94 (quoting *Nussle*, 534 U.S. at 524). Congress decided that the courts needed "fewer and better prisoner suits." *Jones*, 549 U.S. at 203. Our nation's judicial system "remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law." *Id.* And through the PLRA, Congress sought to "preserv[e] prisoners' capacity to file meritorious claims." *Woodford*, 548 U.S. at 117 (Stevens, J., dissenting); *see also* 141 Cong. Rec. S14,628 (daily ed. Sept. 29, 1995) ("If [a prisoner] ha[s] a meritorious lawsuit, of course they should be able to file.") (statement of Sen. Reid).[8] Overall, the PLRA's toolbox of

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[8] *See also* 141 Cong. Rec. 27,042 (1995) ("Indeed, I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.") (statement of Sen. Hatch); *id.* at 27,044 ("[The PLRA] will allow meritorious

controls is "designed to filter out the bad claims [filed by prisoners] and facilitate consideration of the good." *Jones*, 549 U.S. at 204.

The text of the PLRA itself reflects Congress's desire to facilitate the filing of meritorious prisoner claims, while also seeking to deter the frivolous ones. The statute contains various safety-valves, among them: prisoners with three strikes can file lawsuits when placed in imminent danger of serious physical harm, and an indigent federal prisoner shall not be precluded from filing a lawsuit despite being unable to satisfy the initial partial filing requirement. *See supra* p. 3. A Congress bent on achieving deterrence at all cost would not have included such measures.

B. The Per-Prisoner Approach, But Not the Per-Case Approach, Effectuates the PLRA's Competing Goals

Congress's dual purposes – *i.e.*, deterring frivolous prisoner cases and preserving the incentive to file meritorious ones – are both served by sequential collection of filing fees owed for multiple cases or appeals, whereas simultaneous collection exalts the deterrence of frivolous lawsuits at the substantial expense of ensuring the continued filing of meritorious ones. To see this, compare first the expense of filing a case or appeal against the rate of prisoner wages (given that the 20% installment payment under § 1915(b)(2) is computed on the prisoner's "preceding month's *income*," 28 U.S.C. § 1915(b)(2) (emphasis added)).

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claims to be filed, but gives the judge broader discretion to prevent frivolous and malicious lawsuits filed by prison inmates.") (statement of Sen. Thurmond).

Currently, the filing fee for a case in a federal district court is $350. 28 U.S.C. § 1914(a). An appeal costs $505 to file in a circuit. *Id.* §§ 1913, 1917. Meanwhile, federal prisoner wages (and stipends) are meager. Federal prisoners can earn between $0.23 per hour and $1.15 per hour. *See* Fed. Bureau of Prisons, Progr. Stmt. 8120.02 - Work Programs for Inmates-FPI § 345.51 at ch. 5, p. 1 (July 15, 1999), http://www.bop.gov/policy/progstat/8120_002.pdf. Some state prisoners (whose suits in federal court likewise are subject to the PLRA, *see infra* p. 51) earn comparable wages, or even less.[9] In light of these figures, even if one were to

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[9] *See, e.g., Castle v. Eurofresh, Inc.*, 731 F.3d 901, 903 (9th Cir. 2013) (wages for prisoners participating in Arizona's work program range from $0.10 to $0.50 per hour); *Washlefske v. Winston*, 234 F.3d 179, 181 (4th Cir. 2000) (Virginia state prisoners receive approximately $0.90 per hour); *Gambetta v. Prison Rehabilitative Indus. & Diversified Enters., Inc.*, 112 F.3d 1119, 1121 (11th Cir. 1997) (in Florida, prisoners earn $0.45 to $0.50 per hour, "some of which goes to repay the cost of incarceration, some to victim restitution, and some into the inmate's account"); *see also* La. Dep't of Pub. Safety & Corr., Offender Incentive Pay & Other Wage Compensation (La. Admin. Code tit. 22, § 331), (providing that Louisiana state prisoners can earn between $0.02 and $1.00 per hour); Jennifer Brady & Amanda Gordon, Conn. Gen. Assembly Office of Legislative Research, *Inmate Work Activities (2011-R-0191)* at 4-6 (May 6, 2011), http://www.pia.ca.gov/-About_PIA/FastFacts.html (noting that Connecticut prisoners are paid between $0.30 and $1.75 per hour); State of California Prison Industry Auth., Fast Facts, http://www.pia.ca.gov/About_PIA/FastFacts.html ("Inmates receive wages of $.30 to $.95 per hour before deductions"). Some prisoners may also receive a small monthly stipend. *See, e.g., Turley v. Rednour*, 729 F.3d 645, 653 (7th Cir. 2013) (discussing $10 per month stipend for prisoners); *Johns v. Lemmon*, 980 F. Supp. 2d 1055, 1057 (N.D. Ind. 2013) (noting that prisoners receive between $9 and $12.50 a month in "idle pay"); *Losee v. Maschner*, 113 F. Supp. 2d 1343, 1345 (S.D.

assume that a prisoner worked forty hours per week, consistently received the highest wages available, and dedicated every penny earned to the payment of his filing fees, it would still take months to satisfy a single filing-fee-related debt. The payment of several filing fees, when placed together sequentially, takes progressively even longer.

The economic cost of a single 20% monthly payment, and the prospect of that 20% debit occurring for ever-increasing lengths of time if a new case is filed (considering the prisoner's scanty income and the size of the filing fee), is a significant deterrent for an indigent prisoner contemplating bringing a frivolous claim and, therefore, comports with Congress's objective of deterring abusive filings. Sequential collection still requires all IFP prisoners eventually to pay these filing fees in full – "it is merely a question of timing." *Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010). Eventual payment – and the "modest" sting it inflicts – is exactly what the PLRA's proponents anticipated. 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl); *see id.* at S14,413-14 (daily ed. Sept. 27, 1995) ("[W]hen prisoners know that they will have to pay these costs – perhaps not at the time of filing, but eventually – they will be less inclined to file a lawsuit in the first place.") (statement of Sen. Dole).[10]

Iowa 1998) ("every 28 days Losee's inmate account is credited with $7.70 in idle pay").

[10] The Seventh Circuit has criticized the per-prisoner approach because, in its view, sequential collection "postpon[es] payment of the fees for later-filed suits until after the end of imprisonment (and likely avoiding them altogether)." *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997). But this conclusion is far from

Still, the disincentive to filing a new case or appeal would not be so great under the per-prisoner approach as to thwart the PLRA's desire to ensure that meritorious prisoner lawsuits continue to be filed. An indigent prisoner who contemplates filing a meritorious claim would not face the prospect of losing an *additional* 20% per month of his minimal income (and for a long period, because of the size of filing fees) if he files the lawsuit; rather, the consequence under the per-prisoner approach of the suit's filing is to add to the time period for which the 20% monthly exaction will be made (with even the possibility of someday obtaining reimbursement for the filing fee in the queue through a cost award at the close of the meritorious litigation). The prisoner will no doubt "think before bringing [the] claim[]" in case he incorrectly estimates the likelihood of success, but he will not fear "unacceptable hardship[] in order to pursue judicial redress." *Siluk v. Merwin*, 783 F.3d 421, 432 (3d Cir. 2015).

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certain. First, all of the courts of appeals agree that if a prisoner's installment payments came due but were not paid during incarceration, those payment obligations are not forgiven upon release. *DeBlasio v. Gilmore*, 315 F.3d 396, 398-99 (4th Cir. 2003) (listing cases). Second, to the extent that some installment payments did not come due during incarceration, some courts have held that the released prisoner's obligation to pay the balance owed on those fees is generally "determined, like any non-prisoner, solely by whether he qualifies for i.f.p. status," *McGann v. Comm'r, Soc. Sec. Admin.*, 96 F.3d 28, 30 (2d Cir. 1996), while others have gone even further, holding that released prisoners must eventually pay the full amounts of any filing fees owed, no matter what their financial circumstances are upon release. *Gay v. Tex. Dep't of Corr. State Jail Div.*, 117 F.3d 240, 242 (5th Cir. 1997); *Putzer v. Attal*, No. 2:13-CV-00165-APG, 2013 WL 4519351, at *3 (D. Nev. Aug. 23, 2013).

The incentives are different under the per-case approach, and unacceptable in light of the PLRA's dual objectives. There is heavy-handed discouragement of the filing of frivolous cases, because every time the indigent prisoner does so, he loses another 20% per month of current income, quickly reaching 100% of his income as the filings progress to five. As well, there is accompanying suffocation of any impetus to file the meritorious claims. The burden of losing 20% more per month for each legitimate case is significant, considering the prisoner's low wages in the first place. And if the prisoner miscalculates as to the merit of the case, and loses, the additional 20% subtractions per case (up to 100%) will continue long into the future, as the filing fees are incrementally paid. The situation quickly "crosses the line from deterrence to punishment [for filing cases] and was not the intent behind § 1915." *Torres*, 612 F.3d at 247.

C. The PLRA's Multiple Controls Have Already Succeeded in Reducing Prisoner Litigation, Making a Per-Case Sanction Unnecessary

The PLRA has already dramatically reduced the sheer volume of prison cases – by more than half since 1995. "Prison and jail inmates filed twenty-six federal cases per thousand inmates in 1995." Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails & Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. Pa. J. Const. L. 139, 141 (2008). By 2006, this figure had decreased to "less than eleven cases per thousand inmates, a decline of 60%." *Id.* at 141-42.

This Court has previously attributed the sharp decline in prisoner litigation to the PLRA's requirement, at 28 U.S.C. § 1915A, that the district courts screen prisoners' complaints against government officials before docketing and dismiss any that are "frivolous," "malicious," meritless, or barred by qualified immunity. *Woodford*, 548 U.S. at 95 n.4. It has likewise credited the three-strikes rule for reducing the number of filings. *Id.* at 84. Still further, the Court has highlighted the PLRA's exhaustion provision, codified at 42 U.S.C. § 1997e(a), as "a centerpiece of the PLRA's effort to reduce the quantity . of prisoner suits." *Woodford*, 548 U.S. at 83 (internal quotation marks omitted). Plus, the PLRA instituted other similar controls on frivolous filings, including a district court's right to dismiss any meritless or abusive case *sua sponte* and to bar an appeal IFP that the district court certifies is not taken in good faith (*see supra* p. 5). Last, the initial partial filing fee requirement, which always applies, powerfully discourages a prisoner from wasting his limited funds on a new frivolous action. Regardless of which of these filters was the precise cause of the decline in prisoner litigation, the 60% drop in filings demonstrates that the statute already serves its primary purpose of preventing "sportive [prisoner] filings in federal court." *Skinner*, 562 U.S. at 535.

Admittedly, the per-case approach could reduce the quantity of prison litigation even further. But "no legislation pursues its purposes at all costs," let alone one purpose at the expense of another existing objective. *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987); *see also Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1710 (2012) (same). Deciding which of the

PLRA's two competing values "will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice – and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 526.

IV. THE CANON OF STATUTORY CONSTRUCTION UNDER WHICH COURTS SEEK TO AVOID CONSTITUTIONAL QUESTIONS COMPELS THE PER-PRISONER APPROACH

The per-prisoner approach is the better interpretation of § 1915(b)(2) when viewed through the lens of the constitutional-avoidance doctrine. As this Court has explained: "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). "[O]ne of the canon's chief justifications is that it allows courts to *avoid* the decision of constitutional questions. It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Suarez Martinez*, 543 U.S. 371, 381 (2005) (emphasis in original). Here, as three courts of appeals have recognized, the per-case interpretation raises serious constitutional doubts, while the per-prisoner approach does not. *See Siluk v. Merwin*, 783 F.3d 421, 434-36 (3d Cir.

2015); *Torres v. O'Quinn*, 612 F.3d 237, 243, 247-48 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264, 277 (2d Cir. 2001). Hence, because the per-prisoner approach is an "acceptable" and "plausible" interpretation of § 1915(b)(2) (and even the textually required one), the Court should adopt that construction so as to avoid constitutional problems.

The constitutional guarantee at risk under the per-case approach is the right of unimpeded access to the courts in cases involving important underlying rights. "Decisions of this Court have grounded the right of access to courts in the Article IV Privileges and Immunities Clause," "the First Amendment Petition Clause," "the Fifth Amendment Due Process Clause," and "the Fourteenth Amendment Equal Protection and Due Process Clauses." *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (citations omitted). In particular, the right cannot be hampered when the prospective litigant is seeking to vindicate fundamental rights. The Court has held, for example, that indigent litigants cannot be required to pay filing fees in matters of great importance, such as obtaining a divorce, *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971), and appealing a termination of parental rights, *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Less important rights do not enjoy a right of access to the courts for their vindication. *See, e.g., United States v. Kras*, 409 U.S. 434, 446 (1973) (upholding a bankruptcy court filing fee because "[t]here is no constitutional right to obtain a discharge of one's debts in bankruptcy.").

In the context of prisoners, the Court has been equally clear about the right of court access. Indigent prisoners cannot be required to pay fees that they

cannot afford as a condition of gaining access to court. *See, e.g., Griffin v. Illinois*, 351 U.S. 12, 17 (1956) (requiring waiver of transcript fees); *Burns v. Ohio*, 360 U.S. 252, 258 (1959) (requiring waiver of filing fees). Though these foundational cases dealt with prisoners challenging their own criminal convictions, the Court has since recognized that the right extends to other vitally important claims, such as civil rights claims. *E.g., Bounds v. Smith*, 430 U.S. 817, 827-28 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *see generally Thomas v. Holder*, 750 F.3d 899, 909 (D.C. Cir. 2014) (Tatel, J., concurring) (summarizing relevant Supreme Court precedent and expressing "grave doubts" about the constitutionality of the PLRA's three-strikes provision, to the extent that it would prevent indigent prisoners from gaining access to the courts "in order to bring claims involving fundamental constitutional rights").

Prisoners, of course, enjoy no right of court access to pursue claims that are frivolous. *See Lewis v. Casey*, 518 U.S. 343, 353 & n.3 (1996). But as this Court's own holdings make clear, many prisoner lawsuits are not only non-frivolous, but successful on the merits, often resulting in the vindication of important rights.[11]

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[11] *E.g., Holt v. Hobbs*, 135 S. Ct. 853 (2015) (holding that prison regulation violated Religious Land Use and Institutionalized Persons Act by preventing prisoner from growing ½-inch beard in accordance with his religious beliefs); *Brown v. Plata*, 131 S. Ct. 1910 (2011) (upholding order requiring California prison system to reduce overcrowding, which had led to inadequate provision of medical care in violation of the Eighth Amendment); *Johnson v. California*, 543 U.S. 499 (2005) (holding that racial classifications in prison are subject to strict scrutiny); *Hope v. Pelzer*, 536 U.S.

The per-case approach, unlike the per-prisoner approach, may infringe the right of court access to vindicate fundamental rights. Imposition of the per-case method would mean that some indigent prisoners seeking to vindicate important rights through the courts would have to choose between pursuing their claims (thereby incurring increasing 20% monthly outlays until all of their income is sapped) and keeping any measure of discretionary income. Faced with this choice, the prisoner may forego the lawsuit, notwithstanding a fundamental right being at issue.

It is true, that unless a prisoner is subject to the PLRA's three-strikes provision (28 U.S.C. § 1915(g)), the safety-valve measure in § 1915(b)(4) allows him to bring a new lawsuit, even if he has no assets and cannot afford the initial partial filing fee. So, it might be argued that there is no constitutional problem with the per-case approach, because access to the courts still exists even if 100% of the prisoner's monthly income is taken every month. But a law can impermissibly bur-

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730 (2002) (affirming holding that prison "hitching post" violated Eighth Amendment); *Hudson v. McMillian*, 503 U.S. 1, 4 (1992) (holding that prison guards violated prisoner's Eighth Amendment rights when they shackled and beat him while their supervisor told them "not to have too much fun"); *Smith v. Wade*, 461 U.S. 30 (1983) (upholding punitive damage award against a prison guard found liable for harassing, beating, and raping a prisoner); *Hutto v. Finney*, 437 U.S. 678, 687 (1978) (upholding ruling in favor of prisoners, finding that "conditions in . . . isolation cells . . . violate[d] the prohibition against cruel and unusual punishment"). The lawsuit Bruce here sought to join involves challenges to the conditions of his confinement and rests on the Eighth Amendment right to be free from cruel and unusual punishment. *See supra* p. 7.

den the exercise of a constitutional right even if it does not altogether preclude the exercise of that right. In *United States v. Jackson*, 390 U.S. 570 (1968), the Court addressed a federal kidnapping statute that allowed for the imposition of the death penalty only when ordered by the jury. *Id.* at 570-71. The Court found that statutory provision unconstitutional because it impermissibly abridged the defendants' exercise of their Sixth Amendment right to a trial by jury. *Id.* at 581-83. Though, as the Court recognized, Congress's purpose had been to avoid mandatory imposition of the death penalty in every case, the statute had the unintended consequence of deterring defendants from invoking their right to a jury trial by creating the risk of death only when defendants exercised that right, and not when they pleaded guilty or requested a bench trial. *Id.* at 581-82. The defendants, of course, still *could* exercise their right to trial by jury, but they were deterred from doing so. The Court explained that "[w]hatever might be said of Congress' objectives, they cannot be pursued by means that needlessly *chill* the exercise of basic constitutional rights." *Id.* at 582 (emphasis added). "The question is not whether the chilling effect is 'incidental' rather than intentional; the question is whether that effect is unnecessary and therefore excessive." *Id.*

So too here, though one of the purposes of § 1915(b)(2) is undoubtedly to deter prisoners from filing frivolous lawsuits, the per-case approach would have the unintended consequence of deterring the filing of meritorious lawsuits as well, including those involving fundamental-rights claims. Again, under the per-case approach, prisoners who seek to exercise their right of access to the courts even a modest number of times

will face the prospect of losing all or nearly all of their discretionary income. *See supra* p. 30 (describing how a single case can result in five encumbrances, due to district court and appellate filing fees and costs).

While prisons are required to supply prisoners with the bare necessities of life, prisoners use their discretionary income to acquire a few simple amenities to make life in prison slightly more bearable. Prisoners generally must use their own funds to make phone calls to family and friends, or mail letters to loved ones, or buy items for simple amusement or intellectual stimulation, such as reading materials or a chess set. *See, e.g.*, 28 C.F.R. § 540.21 ("Payment of postage"); 28 C.F.R. § 540.105 ("Expenses of inmate telephone use"); Florence Federal Prison Camp Commissary List, http://www.bop.gov/locations/institutions/flm/FLX_CommList.pdf (last visited on Aug. 10, 2015).[12] Under the per-case approach, then, some prisoners will be faced with the dilemma of choosing between either forfeiting all of their income as the price to be paid for court access, or, alternatively, keeping some discretionary income and enduring

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[12] *See also* S.D. Dep't of Corr., Frequent Questions, http://doc.sd.gov/about/faq/mail.aspx (to send letters, prisoners must purchase paper, stamps, and envelopes from the prison commissary); Mich. Dep't of Corr., Family Information Packet, p. 11, http//ww.michigan.gov/documents/corrections/Family_Information_Packet_2013-01-15_408528_7.pdf (inmates must pay for "electronic stamps" in order to send email messages to family members and others); Utah Dep't Corr., How to Buy Books and Magazines for an Inmate, http://corrections.utah.gov/index.php?option=com_content&view=article&id=1048:how-to&catid=20&Itemid=164 ("[b]ooks may only be purchased through the prison Commissary").

fundamental-rights violations without seeking legal recourse. That is an unnecessary "chill" (in the terms of *Jackson*) on a constitutional right, and unnecessary because the per-prisoner approach is available. *Cf. Fuller v. Oregon*, 417 U.S. 40, 53-54 (1974) (holding, in context of state statute requiring later recoupment of counsel fees for appointed counsel in criminal case, that careful tailoring of the law to avoid hardship to indigent person was necessary to escape Sixth Amendment problem).

In sum, the per-case method's burden on the right of access to the courts is unnecessary and therefore constitutionally suspect. The per-prisoner approach to fee-collection, in combination with the other controls put in place by the PLRA, *see supra* p. 41, is more than sufficient to deter prisoners from filing frivolous lawsuits. To avoid the constitutional question posed by the per-case approach, the Court should side with the per-prisoner approach.[13]

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[13] Though not, strictly speaking, a canon of statutory construction, the Court has applied standards of compassion when dealing with *pro se* and IFP litigants. *See Castro v. United States*, 540 U.S. 375, 381 (2003) (*pro se* litigants); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (same); *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 203 (1993) (IFP litigants); *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (same). The vast majority of prisoners bringing lawsuits proceed *pro se*. *See* United States Courts, *Table S-23, Civil Pro Se And Non-Pro Se Filings, by District* (Sept. 30, 2010), http://www.uscourts.gov/statistics/table/c-13/judicial-business/2010/09/30. Under its cases demanding leniency and charity toward *pro se* and IFP filers, the Court would be warranted in choosing, when, as here, faced with two competing statutory constructions affecting *pro se* IFP liti-

V. ADMINISTRATIVE FEASIBILITY CONSIDERATIONS NECESSITATE THE PER-PRISONER APPROACH

The per-prisoner approach is administratively more convenient than the per-case approach and also less likely to interfere with the normal functioning of state correctional facilities and court systems. As a result, the better understanding of § 1915(b)(2) is that Congress intended to have multiple filing fees collected sequentially rather than simultaneously.

A. The per-prisoner approach is more sensible because it avoids situations in which the monetary yield from filing-fee collection will be dwarfed by the administrative costs associated with collecting the payments and then forwarding them to the appropriate courts. Under a sequential regime, the agency having custody of the prisoner collects a single installment payment and forwards it to the clerk of a single court. After the first filing fee is paid off, if the prisoner owes a second filing fee, then the prison begins sending payments to the next court. Under a simultaneous-collection regime, prisons would need to send as many as five checks for five different cases, possibly to five different courts. When the amount collected from the prisoner is small – as presumably it often will be, given that the prisoners subject to the installment plan are indigent – the collection process for the per-case approach devolves into an exercise in frivolity. For example, if a prisoner earns $10 in a given month, the prison will

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gants, the option that works the least harshly on them. In this instance, that is the per-prisoner approach under § 1915(b)(2).

have to cut five checks for just $2 each and then send those checks to as many as five different court clerks.

The procedure under the per-case approach borders on absurdity if the prisoner earns a miniscule amount of money in a given month. Consider, for example, a prisoner who has exactly $10 in his account at the beginning of the month. That month, he earns a mere $2.[14] The next month, because the amount in the prisoner's account "exceeds $10" and § 1915(b)(2) operates by taking only a share of the "preceding month's *income*" (not the opening balance), 28 U.S.C. § 1915(b)(2) (emphasis added), the prison distributes a certain percentage of only $2 (*i.e.*, the preceding month's income). If the prisoner owes five filing fees (or costs), the prison takes the entire $2 and divides it five ways, sending out five payments, each for 40 cents. The prison and the courts must therefore expend resources calculating, sending, receiving, and tracking five different payments, each of which is worth less than a postage stamp. The per-prisoner approach, which requires sending just one payment (two if there are costs), is far simpler and imposes less of an administrative burden on the correctional facilities and courts charged with carrying out § 1915(b)(2).

B. The per-case approach is more complicated than the per-prisoner approach because it entails all of the administrative challenges of *both* regimes. Under the per-prisoner approach, the prison keeps track of the order in which the filing fees (and costs) are incurred

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[14] This is not an unrealistic hypothetical. In Louisiana, for example, some prisoners earn as little as $.02 per hour of work. *See supra* p. 37 n.9.

and sees to it that they are paid off in sequential order. When the first filing fee is paid off, the prison begins sending payments for the second one.

Under the per-case approach, the prison sends out additional monthly payments each time the prisoner files a new lawsuit and incurs a new filing-fee obligation, such that – as explained above – the prison will send multiple payments simultaneously. But once a prisoner owes more than five filing fees or costs, the per-case approach presumably becomes both simultaneous *and* sequential. *See supra* p. 24. Given that prisons cannot collect more than 100% of a prisoner's income, the sixth (and seventh and eighth) filing fee must wait in line until the prisoner's first fee is paid off. The prison, consequently, must send out five payments at a time while keeping track of when each payment obligation will be satisfied, so that it can then forward payments for the next filing fee.

C. The per-case approach creates considerable administrative confusion for state correctional facilities, which are responsible for handling payments under the PLRA for state prisoners pursuing federal lawsuits and appeals. Section 1915(b)(2)'s collection instruction, again, is to the "agency having custody of the prisoner" and is not limited to federal prison authorities. "Prisoner" subject to the PLRA "means any person incarcerated or detained in *any* facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h) (emphasis added).

The confusion arises from the fact that the states deduct money from prisoners' incomes in order to meet a wide range of other financial obligations that they impose on their prisoners. These include medical co-payments, restitution payments, child-support payments, incarceration or "pay-to-stay" fees, and disciplinary fees.[15] Moreover, state prisoners may owe fees for lawsuits or appeals filed in state courts. Many states have enacted statutes that are virtually identical to the federal PLRA, requiring prisoners to pay filing fees on an installment basis.[16]

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[15] *E.g.*, State of Ala. Dep't of Corr. Admin. Reg. No. 703, *Inmate Co-Payment for Health Services* (June 1, 2013), http://www.doc.state.al.us/docs/AdminRegs/AR703.pdf (medical co-payments); Utah Dep't Corr., *Inmate Health Care, Q&A: Do Inmates Have Co-Pay Charges?*, http://corrections.utah.gov/ index.php?option=com_content&view=article&id=1054:health-care &catid=20&Itemid=182 (medical co-payments); Cal. Dep't of Corr. & Rehab., *Office of Victim & Survivor Rights & Services*, http://www.cdcr.ca.gov/victim_services/ restitution_collections. html (restitution); Report of the State Auditor, *Inmate Restitution and Child Support: Performance Audit*, at 29 (Mar. 2013), http://www.leg.state.co.us/OSA/coauditor1.nsf/All/70B1E72841 FDC5A187256E280064A65A/$FILE/1477%20Inmate%20 Restitution%20Perf%20FY03.pdf (child support); Alison Bo Andolena, *Can They Lock You Up and Charge You For It?: How Pay-to-Stay Corrections Programs May Provide a Financial Solution for New York and New Jersey*, at 106-08, 35 Seton Hall Legis. J. 94, 106-08 (2010) http://scholarship.shu.edu/ cgi/viewcontent.cgi?article= 1003&context=shlj (pay-to-stay fees); State of Tenn., Dep't of Corr., *Administrative Policies and Procedures: Disciplinary Punishment Guidelines*, at 4, § VI.K (effective June 1, 2012), http://www.state.tn.us/correction/pdf/502-02.pdf (disciplinary fees).

[16] *E.g.*, Colo. Rev. Stat. Ann. § 13-17.5-103; Idaho Code Ann. § 31-3220A; La. Rev. Stat. Ann. 15:1186; Mass. Gen. Laws Ann. ch.

With so many competing payment obligations, state correctional facilities must decide which obligations take precedence. Under the per-case approach, this task becomes substantially more difficult than it would under the per-prisoner approach. With payment obligations for federal filing fees rising and falling between zero and 100%, and given federal supremacy over state law and the obligatory language of subsection (b)(2) (*see* 28 U.S.C. § 1915(b)(2) ("[t]he agency having custody of the prisoner *shall* forward payments") (emphasis added)), state facilities could be compelled to recalibrate frequently how much of their prisoners' incomes is withdrawn to meet state obligations. For example, a state prisoner owing one federal filing fee would have 80% of his income left, some of which the state could collect for its own purposes. But as that same prisoner files additional federal lawsuits and appeals, he will have increasingly less income (and eventually no income) to spare.

Such a scenario, resulting from the per-case approach, would not only be administratively cumbersome, it would also frustrate many state objectives that are carried out through the management of prisoner incomes. These problems can be avoided if installment payments under § 1915(b)(2) are capped at a flat rate of 20%, resulting in less fluctuation in the amounts withheld, and always leaving plenty of prisoner income (in relative terms) for state purposes.

261, § 29; Mich. Comp. Laws Ann. § 600.2963; Mo. Ann. Stat. § 506.372; Okla. Stat. Ann. tit. 57, § 566.3; 42 Pa. Cons. Stat. Ann. § 6602; S.C. Code Ann. § 24-27-100; Tenn. Code Ann. § 41-21-807.

CONCLUSION

The decision of the D.C. Circuit refusing to stay collection of Bruce's portion of the filing fee owed for the mandamus petition should be reversed.

Respectfully submitted,

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APPENDIX

28 U.S.C. § 1915 Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record

on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

No. 14-844

In the Supreme Court of the United States

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66, when an *in forma pauperis* prisoner files a civil lawsuit or an appeal in federal court and cannot pay the full filing fee, he generally must make an initial partial payment, 28 U.S.C. 1915(b)(1), and then must pay the rest of the filing fee by "mak[ing] monthly payments of 20 percent of the preceding month's income credited to [his] account" (so long as his account contains more than $10), 28 U.S.C. 1915(b)(2).

The question presented is whether, when an *in forma pauperis* prisoner has filed more than one lawsuit or appeal, his monthly payment is 20 percent of his monthly income regardless of how many cases he has filed or instead 20 percent of his monthly income for each case that he has filed.

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In the Supreme Court of the United States

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BRIEF FOR THE RESPONDENTS

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 761 F.3d 1.

JURISDICTION

The opinion (Pet. App. 1a-18a) and orders (Pet. App. 19a-22a) of the court of appeals were filed on August 5, 2014. A petition for rehearing was denied on October 22, 2014 (Pet. App. 23a). The court of appeals issued additional orders implementing its opinion on October 22, 2014 (Pet. App. 24a-27a), and on November 21, 2014 (Pet. App. 28a-30a). The petition for a writ of certiorari was filed on January 16, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The general rule in federal court is that litigants must pay certain fees upon filing a civil action or a notice of appeal. See 28 U.S.C. 1913, 1914, 1917; Fed. R. App. P. 3(e). However, under the *in forma pauperis* statute, a court may allow a litigant to proceed "without prepayment of fees or security therefor" if the litigant establishes that he is unable to pay the required fees. 28 U.S.C. 1915(a)(1). Before 1996, indigent prisoners could rely on this provision to file lawsuits in federal court without paying any filing fees.

In 1996, concerned that the volume of prisoner litigation was making it difficult for federal courts to separate the wheat from the chaff, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66. The PLRA reflects Congress's judgment that the federal courts need "fewer and better prisoner suits." *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). To that end, Congress provided for special treatment of prisoner claims. Among other things, under the PLRA, a prisoner who has been granted *in forma pauperis* status cannot avoid payment of filing fees altogether. Pet. App. 5a. Instead, the prisoner is obligated to "pay the full amount of [the] filing fee" for a civil action or appeal. 28 U.S.C. 1915(b)(1).

If a prisoner cannot pay the full fee upfront when he files the action or appeal, the PLRA allows him to make an initial partial payment and then make regular monthly payments to pay the balance due. The statute provides formulas for these payments. The "initial partial filing fee" is 20 percent of the greater of the "average monthly deposits" into the prisoner's

trust account or the "average monthly balance" in that account during the past six months. 28 U.S.C. 1915(b)(1). The "monthly payment[]" is calculated as "20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). The monthly payments continue "until the filing fees are paid." *Ibid.*

The prisoner need not make an initial partial payment at the start of a lawsuit or appeal if he has no funds available with which to do so. See 28 U.S.C. 1915(b)(4) ("In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); see also 28 U.S.C. 1915(b)(1) (requiring collection of the initial payment only "when funds exist"). In addition, no monthly payments are required unless the prisoner has more than $10 in his trust account. 28 U.S.C. 1915(b)(2).

2. This case arises out of a lawsuit filed by federal prisoner Jeremy Pinson in the United States District Court for the District of Columbia. Pet. App. 2a-3a. Pinson is serving a twenty-year sentence for threatening the President and other offenses, and he "has made frequent use of the federal courts during his time in prison," filing "more than 100 civil actions and appeals." *Id.* at 2a.

In this lawsuit, Pinson sued various Bureau of Prisons (BOP) officials (respondents in this Court) to challenge his placement in a special management unit in his prison. Pet. App. 2a-3a.[1] The district court

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[1] Respondents were named as defendants in their official and individual capacities, see Compl. 2 (D.D.C. Jan. 19, 2010), but no summonses were issued in the district court and no respondent has

concluded that venue was inappropriate in the District of Columbia because Pinson was housed in a prison in Alabama. *Id.* at 3a. The court therefore transferred the case to the Northern District of Alabama. *Ibid.*

3. Pinson appealed the transfer order. Pet. App. 3a. He also sought *in forma pauperis* status and asked the court of appeals to stay collection of filing fees on the ground that he is already paying 20 percent of his monthly income for filing fees in other cases. *Id.* at 4a; see Mot. to Stay Collection of Fees 1 (D.C. Cir. Apr. 5, 2010).

Petitioner is a federal inmate who is serving a fifteen-year sentence for armed kidnapping and assault with the intent to kill. See F6805-03 Judgment at 1 (D.C. Super. Ct. Nov. 1, 2004). He has filed numerous federal lawsuits while imprisoned. See note 7, *infra*.

Petitioner and several other federal prisoners sought to join Pinson's lawsuit as co-plaintiffs. Pet. App. 4a. The court of appeals added petitioner (and others) to the lawsuit. *Id.* at 4a-5a. Petitioner sought *in forma pauperis* status and also joined Pinson's motion to stay the collection of filing fees. *Ibid.* Petitioner stated that he had previously incurred obligations for filing fees in other cases under the PLRA. *Ibid.*; see Joinder to Mot. to Stay Collection 1 (D.C. Cir. Aug. 26, 2013). As a result, petitioner (like Pinson) contended that he should not be required to make any monthly payments towards the filing fee in this case until his prior fee obligations were satisfied.

4. The court of appeals declined to stay collection of the filing fees and dismissed petitioner's claims for

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been served. Respondents appear here only in their official capacity.

lack of standing. Pet. App. 1a-18a. As relevant here, the court granted petitioner *in forma pauperis* status, so that he may pay his filing fee in installments rather than upfront. *Id.* at 8a; see 28 U.S.C. 1915(a) and (b). But the court rejected petitioner's argument about how his monthly payments should be calculated.

The court of appeals observed that there are two possible approaches to calculating a prisoner's monthly payment under 28 U.S.C. 1915(b)(2): the per-prisoner approach, where a prisoner pays 20 percent of his monthly income regardless of how many cases he has filed, and the per-case approach, where a prisoner pays 20 percent of his monthly income for each case that he has filed. Pet. App. 12a-13a. The court concluded that the per-case approach best comports with the statute's text, structure, and purposes. *Id.* at 14a-17a.

The court explained that the statute's text and structure "indicate that its provisions apply *to each action or appeal* filed by a prisoner." Pet. App. 14a. The first part of the statute, subsection (b)(1), uses the singular to refer to a prisoner's "threshold obligation to make an initial partial payment": if a prisoner brings "*a civil action* or *files an appeal*," the court must collect "*an initial partial filing fee*." *Ibid.* (quoting 28 U.S.C. 1915(b)(1) (emphases added)). This language, the court noted, "calls for the assessment of the initial partial filing fee *each time* a prisoner brings a civil action or files an appeal." *Id.* at 14a-15a (internal quotation marks omitted).

The court then explained that the "initial partial filing fee" set out in subsection (b)(1) is the "triggering condition" for the second part of the statute, subsection (b)(2), which requires the monthly payments.

Pet. App. 15a. "Given that the initial fee required by subsection (b)(1) applies on a per-case basis," the court reasoned, "it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Ibid.* The court noted that its conclusion is "fortifie[d]" by other parts of Section 1915, which also refer to a single case. *Id.* at 15a-16a.

The court also concluded that the per-case approach serves the PLRA's purpose of deterring frivolous prisoner lawsuits. Pet. App. 17a. As the court explained, "[c]apping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action." *Ibid.* And "[n]othing in the statute suggests that a second or third action should be treated any differently than the first." *Id.* at 16a. Finally, the court rejected petitioner's argument that the per-prisoner approach is necessary to avoid concerns about access to the courts. The court noted that the PLRA includes a built-in safety valve that allows a prisoner with no assets to proceed without paying an initial filing fee. *Ibid.* (discussing 28 U.S.C. 1915(b)(4)). And, the court observed, the statute permits monthly payments only when the prisoner has at least $10 in his account. *Id.* at 16a-17a (discussing 28 U.S.C. 1915(b)(2)). As a result, and assuming that the petitioner is not subject to the PLRA's three-strikes provision, "even if 100 percent of a prisoner's income were subject to recoupment for filing fees, the statute assures his ability to initiate an action." *Id.* at 17a.

5. The court of appeals then entered a series of orders setting out the amounts petitioner must pay for this case. Pet. App. 19a-30a. The court stated that

petitioner is obligated to pay $90 (one-fifth of the filing fee), with an initial partial payment of $0.64 and monthly payments of 20 percent of his previous month's income (so long as the amount in his trust account exceeds $10). *Id.* at 28a-29a.[2]

DISCUSSION

Petitioner contends (Pet. 7-22) that this Court should grant certiorari to resolve a conflict in the circuits about the appropriate formula for calculating an *in forma pauperis* prisoner's monthly payments under the PLRA. The court of appeals correctly held that the PLRA requires prisoners to make their monthly payments on a per-case basis and that they cannot avoid making payments in their current case because they have incurred filing fee obligations in other cases. Respondents agree with petitioner, however, that this case presents a recurring question of substantial importance on which the circuits have divided and that this case is an appropriate vehicle in which to decide the question. This Court's review of the question presented therefore is warranted.

1. The court of appeals correctly held that petitioner is required to make monthly payments toward the filing fee in this case, even though he is also mak-

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[2] The court of appeals decided, without the benefit of briefing on the issue, that each of five co-plaintiffs should pay a proportionate share of the $450 filing fee. See Pet. App. 24a, 28a. Other circuits have required each prisoner in a multi-prisoner case to pay the full filing fee. See, *e.g.*, *Hagan* v. *Rogers*, 570 F.3d 146, 155-156 (3d Cir. 2009); *Boriboune* v. *Berge*, 391 F.3d 852, 855-856 (7th Cir. 2004); *Hubbard* v. *Haley*, 262 F.3d 1194, 1197-1198 & n.2 (11th Cir. 2001), cert. denied, 534 U.S. 1136 (2002); but see, *e.g.*, *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999). The government does not seek review of the proportionate-share issue before this Court.

ing monthly payments for other cases he has filed. Section 1915(b) sets out the rules for payment of filing fees by prisoners proceeding *in forma pauperis* in federal court. When a prisoner "brings a civil action or files an appeal in forma pauperis," he owes "the full amount of [the] filing fee," which is paid through an initial partial payment and monthly payments. 28 U.S.C. 1915(b)(1) and (2). The "initial partial filing fee" is 20 percent of the greater of the average monthly deposits in the prisoner's account or the average monthly balance of the account over the preceding six months. 28 U.S.C. 1915(b)(1). "After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). Those payments are sent from the agency having custody of the prisoner to the court so long as "the amount in the account exceeds $10." *Ibid.*

a. The text and structure of Section 1915(b) make clear that monthly payments are calculated on a per-case basis. Both subsection (b)(1) and subsection (b)(2) are written in the singular, referring to a single case or appeal. For example, Section 1915(b)(1) specifies that "if a prisoner brings *a civil action* or files *an appeal* in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee," which consists of "*an initial partial filing fee*" and "monthly payments" towards the fee. 28 U.S.C. 1915(b)(1) and (2) (emphases added). All agree that the first part of the statute, which addresses the initial partial filing fee, refers to a single case. Pet. App. 15a ("Amicus acknowledges that the initial partial filing fee accrues

in each case, regardless of the number of suits initiated.").

Given that subsection (b)(1) operates on a per-case basis, the most logical reading of subsection (b)(2) is that it operates in the same manner. As the court of appeals explained (Pet. App. 15a), the first part of the statute sets out the "'triggering condition' for the monthly installments" in the second part of the statute, and so "the two provisions should be read in tandem." Just as the statute "calls for assessment of the initial partial filing fee *each time* a prisoner 'brings a civil action or files an appeal,'" the 20 percent monthly payment must be made for *each* appeal. *Id* at 14a-15a (quoting 28 U.S.C. 1915(b)(1)).

That conclusion is reinforced by the language in subsection (b)(2) that explains how the monthly payments will be made: the statute directs the "agency having custody of the prisoner" to "forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). The same court that "assess[ed]" the initial partial filing fee under subsection (b)(1) receives monthly payments under subsection (b)(2). And since the court assesses the partial filing fee on a per-case basis, it follows that the same court would collect the monthly follow-up payments on a per-case basis as well.[3]

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[3] Contrary to petitioner's contention (Pet. 6 n.1), the language directing "the clerk of the court" to collect "fees" (28 U.S.C. 1915(b)(2)) does not support the per-prisoner approach. Although petitioner assumes (Pet. 6 n.1) that the term "fees" must refer to multiple cases, he overlooks the fact that several different types of fees can apply in a single case. See, *e.g.*, D.C. Cir., *Court of Appeals Miscellaneous Fee Schedule* 1-2 (Dec. 1, 2014), http://

The statute is replete with language confirming that it refers to an individual case, not all of a prisoner's cases combined. See, *e.g.*, 28 U.S.C. 1915(a) (permitting a federal court to "authorize the commencement, prosecution or defense of *any suit, action* or *proceeding*, civil or criminal, or *appeal* therein, without prepayment of fees or security therefor, by a person" who demonstrates indigency (emphases added)); 28 U.S.C. 1915(c) (allowing "*the* court" to direct that "*the* record" or transcript of proceedings be printed at government expense (emphases added)); 28 U.S.C. 1915(d) (authorizing "[t]he officers of *the* court" to serve process (emphasis added)); 28 U.S.C. 1915(e) (directing "*the* court [to] dismiss *the* case at any time if *the* court determines that * * * the allegation of poverty is untrue" or that "*the* action or appeal" is frivolous or otherwise flawed (emphases added)); 28 U.S.C. 1915(f) (permitting the court to award "costs at the conclusion of *the* suit or action as in other proceedings" (emphasis added)); see also Pet. App. 15a-16a.

b. The per-case approach adopted by the court of appeals is consistent with the PLRA's purposes. Congress enacted the PLRA in part to deter frivolous litigation by prisoners in federal court. See, *e.g.*, *Skinner* v. *Switzer*, 131 S. Ct. 1289, 1299 (2011) (Congress placed "a series of controls on prisoner suits" in

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www.cadc.uscourts.gov/internet/home.nsf/Content/court+fees. Indeed, the same language is used in Section 1915(b)(1), see 28 U.S.C. 1915(b)(1) (noting that the court "shall assess and, when funds exist, collect, as a partial payment *of any court fees* required by law, an initial partial filing fee" (emphasis added)), and petitioner correctly concedes that Section 1915(b)(1) applies to only a single case.

order "to prevent sportive filings in federal court."); *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007) (PLRA was designed to "ensur[e] that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit"). One way that Congress sought to achieve that goal was by requiring prisoners to pay their litigation expenses. The "modest monetary outlay" required when a prisoner files a lawsuit "force[s] prisoners to think twice about the case and not just file reflexively." 141 Cong. Rec. 14,572 (1995) (Sen. Kyl). After the PLRA, prisoners no longer have "little to lose and everything to gain"; now, prisoners "know that they will have to pay" court fees and therefore will be "less inclined" to file a nonmeritorious suit. *Id.* at 14,570-14,571 (Sen. Dole).

Requiring prisoners who pursue multiple lawsuits to make multiple monthly payments is consistent with the PLRA's purposes. Under the per-case approach, a prisoner with available funds has an economic disincentive to bring a second or subsequent lawsuit, which serves as a deterrent against frivolous litigation. See 141 Cong. Rec. at 14,571 (Sen. Dole) (stressing the need for an "economic disincentive to going to court"); Pet. App. 16a ("Nothing in the statute suggests that a second or third action should be treated any differently than the first."). Under the per-prisoner approach, by contrast, the prisoner pays the same monthly amount no matter how many lawsuits he has filed. The per-prisoner approach allows a prisoner to postpone his monthly payments for any additional lawsuits

at least until after all previous filing fees had been paid, perhaps indefinitely.[4]

The per-case method also avoids practical problems and administrative difficulties that Congress could not have intended. The PLRA's direction that the prison make payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added), demonstrates that Congress expected that each court would collect a monthly payment without regard to any payments being made to other courts. Under a per-prisoner approach, whether a court may obtain monthly payments depends on what other courts are doing, and the coordination becomes more difficult the more lawsuits the prisoner has filed. The fact that Section 1915(b)(2) offers no guidance on coordinating payments for multiple lawsuits reinforces that it applies only to a single lawsuit.

c. Contrary to petitioner's contention (Pet. 16-17), the canon of constitutional avoidance does not justify adopting the per-prisoner approach to calculating monthly payments under Section 1915(b)(2). The statute contains an important safety-valve provision

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[4] Several circuits have held that *in forma pauperis* prisoners need not continue to make monthly installment payments once they have been released from prison. See, *e.g.*, *DeBlasio* v. *Gilmore*, 315 F.3d 396, 399 (4th Cir. 2003); *McGore* v. *Wrigglesworth*, 114 F.3d 601, 612-613 (6th Cir. 1997); *McGann* v. *Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996); but see, *e.g.*, *Gay* v. *Texas Dep't of Corr. State Jail Div.*, 117 F.3d 240, 242 (5th Cir. 1997). Even if a circuit allows collection post-incarceration, there is no guarantee of payment because the statute does not provide a mechanism for collecting fees from prisoners who have been released. See 28 U.S.C. 1915(b)(2) (directing the prison "having custody of the prisoner" to collect monthly payments from the prisoner's account).

that ameliorates any constitutional concerns about access to the courts. The statute provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing civil or criminal judgment" because "the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee is due only "when funds exist"). That provision ensures that a prisoner will not be prohibited from pursuing a meritorious claim due to lack of funds. Petitioner is therefore mistaken in contending (Pet. 17) that a prisoner with no assets would have "no ability to file any lawsuits."

Moreover, as the D.C. Circuit noted, the statute requires monthly payments only so long as "amount in the [prisoner's trust] account exceeds $10." 28 U.S.C. 1915(b)(2). A prisoner therefore would never be required to pay "100% of [his] income[]" to court fees. Pet. 15. More important, prison systems are constitutionally bound to provide inmates with the necessities of life, including adequate food, clothing, shelter, and medical care, *Farmer* v. *Brennan*, 511 U.S. 825, 832 (1994), as well as with "paper and pen to draft legal documents" and "stamps to mail them," *Bounds* v. *Smith*, 430 U.S. 817, 824-825 (1977). Adopting the per-case approach under Section 1915(b)(2) therefore would not force a prisoner to choose between paying for a lawsuit and satisfying his most basic needs. Only those prisoners who can afford to make filing-fee payments will be required to do so, while those who cannot make any payments will not be barred from pursuing their claims.

Finally, a prisoner with a meritorious claim may owe nothing at the end of the litigation. See Fed. R.

Civ. P. 54(d)(1) (allowing an award of costs); see also 28 U.S.C. 1920(1) (explaining that "costs" includes filing fees); 28 U.S.C. 2412(a)(1) (allowing costs to be recovered against the United States). For that reason as well, petitioner is wrong to assert that the per-case approach prevents prisoners from pursuing meritorious claims.[5]

2. The courts of appeals have disagreed about whether monthly payments under 28 U.S.C. 1915(b)(2) should be calculated using the per-prisoner approach or the per-case approach. The court of appeals recognized this circuit conflict in its opinion. See Pet. App. 12a-14a.

The Fifth, Seventh, Eighth, and D.C. Circuits have adopted the per-case approach, holding that a prisoner who has filed multiple lawsuits must make monthly payments for each of his cases (so long as his account balance exceeds the specified threshold amount). See Pet. App. 14a-17a; *Atchison* v. *Collins*, 288 F.3d 177, 180-181 (5th Cir. 2002) (per curiam); *Lefkowitz* v. *Citi-Equity Grp., Inc.*, 146 F.3d 609, 612 (8th Cir. 1998), cert. denied, 525 U.S. 1154 (1999); *Newlin* v. *Helman*, 123 F.3d 429, 436 (7th Cir. 1997), cert. denied, 522 U.S. 1054 (1998), overruled in part on other grounds by *Lee* v. *Clinton*, 209 F.3d 1025, 1026-1027 (7th Cir. 2000), and *Walker* v. *O'Brien*, 216 F.3d 626, 634-637 (7th Cir.), cert. denied, 531 U.S. 1029 (2000). The Tenth Circuit has reached the same conclusion in an unpublished opinion. See *Christensen* v. *Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 Fed. Appx. 821, 832-833 (2010) (unpublished).

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[5] Even a prisoner barred from *in forma pauperis* status entirely may have a second safety valve—he may be able to file his federal claim in state court.

In contrast, the Second, Third, and Fourth Circuits have adopted the per-prisoner approach, holding that a prisoner who has filed multiple lawsuits need only make one monthly payment for all of his lawsuits. See *Siluk* v. *Merwin*, No. 11-3996, 2015 WL 1600236, at *3-*9 (3d Cir. Apr. 21, 2015); *Torres* v. *O'Quinn*, 612 F.3d 237, 242-248 (4th Cir. 2010); *Whitfield* v. *Scully*, 241 F.3d 264, 276-277 (2d Cir. 2001).[6]

3. This Court's review of the question presented is warranted. The disagreement in the circuits is well established and is unlikely to dissipate without this Court's intervention. The result of the circuit split is that similarly situated prisoners are subject to different payment rules depending on the circuit in which they brought suit. Indeed, the same prisoner may be subject to different rules if he brings suit in a circuit that has adopted the per-case approach and a circuit that has adopted the per-prisoner approach. Such situations are not infrequent in the federal system, especially because federal prisoners may be transferred from a prison in one circuit to a prison in another circuit. Petitioner, for example, has filed numerous lawsuits, in circuits taking the per-case approach and circuits taking the per-prisoner approach.[7]

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[6] In addition to adopting the per-prisoner approach, the Second Circuit also held that the 20 percent monthly payment limit applies separately for filing fees and other court costs, so that an inmate who has filed multiple lawsuits and owes both fees and costs pays a maximum of 40 percent of his monthly income. *Whitfield*, 241 F.3d at 277-278.

[7] See, *e.g.*, *Bruce* v. *Alvarez*, No. 1:14-CV-03232 (D. Colo. filed Nov. 26, 2014); *Bruce* v. *Wilson*, No. 1:13-CV-00491 (D. Colo. filed Feb. 25, 2013); *Bruce* v. *Holbrook*, No. 1:10-CV-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce* v. *Chambers*, No. 3:10-CV-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce* v. *Reese*, No. 1:09-CV-02378 (N.D.

And although petitioner was incarcerated at a facility in Talladega, Alabama, when this lawsuit was initiated, see, *e.g.*, 1:09-CV-02378 Compl. at 1 (N.D. Ala. Nov. 24, 2009), he is now incarcerated in Florence, Colorado, see BOP, *Inmate Locator*, http://www.bop.gov/inmateloc (last visited May 6, 2015) (BOP Register No. 35363-007). Thus, there is a distinct possibility that an inmate will incur multiple fee obligations in courts that interpret Section 1915(b) inconsistently.

Further, the disagreement in the circuits has created practical difficulties in administering the PLRA's payment scheme. The BOP is responsible for collecting the monthly payments at issue from federal prisoners and forwarding them to the relevant clerk of court. See 28 U.S.C. 1915(b)(2). Because of the divergence in the circuits, the BOP must use different methods to collect monthly payments in different circuits.

Moreover, the BOP experience is only part of the problem. The vast majority of prisoner litigation in the federal courts is brought by state prisoners.[8] Although state prisoners may be less likely than federal prisoners to initiate litigation in multiple circuits, it remains the case that different state prisoners are subject to different collection rules depending on the

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Ala. filed Nov. 24, 2009). The government has not argued in this case that petitioner is precluded from obtaining *in forma pauperis* status under the "three-strikes" provision in 28 U.S.C. 1915(g).

[8] See, *e.g.*, U.S. Courts, *Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending September 30, 2014*, at 1, http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2014/appendices/C03Sep14.pdf (last visited May 6, 2015) (reporting that prisoner suits against federal officials are significantly outnumbered by prisoner suits against non-federal officials).

circuit in which they are incarcerated. This Court's review is warranted to provide a uniform rule for all *in forma pauperis* prisoners who file suit in federal court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2015

No. 14-844

In the Supreme Court of the United States

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66, when an *in forma pauperis* prisoner files a civil lawsuit or an appeal in federal court and cannot pay the full filing fees, he generally must make an initial partial payment, 28 U.S.C. 1915(b)(1), and then must pay the rest of the filing fees by "mak[ing] monthly payments of 20 percent of the preceding month's income credited to [his] account" (so long as his account contains more than $10), 28 U.S.C. 1915(b)(2). The question presented is:

Whether, when an *in forma pauperis* prisoner has filed more than one federal lawsuit or appeal, his monthly payment is 20 percent of his monthly income regardless of how many cases he has filed or instead is 20 percent of his monthly income for each case that he has filed.

PARTIES TO THE PROCEEDING

In the court of appeals, petitioner Antoine Bruce was joined by Jeremy Pinson, Andrew Hobbs, Jeremy Brown, and John Leigh, who were co-petitioners on Bruce's mandamus petition (though only Bruce is a party in this Court). All of them were also purportedly joined in their mandamus petition by Joseph Stevens, Richard Blount, Terrance Young, Joe Ramirez, Mario Zuniga, Alexis Ayala, Maxmillian McGarvie, Richard Hugly, Bobby Cowley, Jesse Jensrud, Ronald Coleman, Brooks Terrell, Angel Fernandez-Rodriguez, Anthony Zaragoza, Edwin Guzman-Garcia, Matthew Eyre, Javier Gonzalez, Ramiro Pacheco, Ramiro Rosillo, James Chatman, Joel Murillo-Delgado, Shawn Cropp, Nathaniel Theris, Ugochukwu Ossai, Manuel Gonzalez, David Gates, Sireno Castro, Laron Marshall, Conghau To, Enrique Chavez-Hernandez, Gary Kornegay, Chavon Wiggins, Randy Atchley, Sean Fabian, Damarcus Law, Wayne Jenkins, Windzer Fleurissaint, and Donte Allen, but none of those individuals participated in the briefing in the court of appeals as they were all dismissed from the case because they had died, had failed to sufficiently prosecute the case, or had otherwise indicated that they did not wish to participate. Mikeal Glenn Stine separately filed a motion to join the mandamus petition, but that motion was denied.

The respondents in the court of appeals were Charles E. Samuels, Jr., the Director of the Federal Bureau of Prisons; Harley G. Lappin, formerly the Director of the Federal Bureau of Prisons; Joyce K. Conley, formerly the Assistant Director of the Federal Bureau of Prisons; Raymond E. Holt, formerly the Regional Director for the Southeast Region of the

Federal Bureau of Prisons; Delbert G. Sauers, formerly the D.S.C.C. Chief of the Federal Bureau of Prisons; Rufus Williams, formerly the Regional Correction Services Administrator of the Federal Bureau of Prisons; John T. Rathman, formerly the Warden of FCI Talladega; Lisa Austin, formerly the Chief Designator of the Federal Bureau of Prisons; and Lee H. Green, Hearings Administrator of the Federal Bureau of Prisons. All of these defendants (other than Samuels) were sued in both their official and personal capacities; Samuels was not a named defendant in the complaint and was automatically substituted for Lappin in his official capacity only.

In this Court, the following individuals are additional respondents in their official capacities only, who have been automatically substituted under Rule 35: Angela Dunbar, Assistant Director for the Correctional Programs Division of the Federal Bureau of Prisons; Helen J. Marberry, Regional Director for the Southeast Region of the Federal Bureau of Prisons; Jose Santana, D.S.C.C. Chief of the Federal Bureau of Prisons; Mark C. Foreman, Regional Correction Services Administrator of the Federal Bureau of Prisons; and Anita Sheehey, Chief Designator of the Federal Bureau of Prisons.

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In the Supreme Court of the United States

No. 14-844

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 761 F.3d 1.

JURISDICTION

The opinion (Pet. App. 1a-18a) and orders (Pet. App. 19a-22a) of the court of appeals were filed on August 5, 2014. A petition for rehearing was denied on October 22, 2014 (Pet. App. 23a-25a). The court of appeals issued additional orders implementing its opinion on October 22, 2014 (Pet. App. 24a-27a), and on November 21, 2014 (Pet. App. 28a-30a). The petition for a writ of certiorari was filed on January 16, 2015, and granted on June 15, 2015. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. The general rule in federal court is that litigants must pay certain fees upon filing a civil action or an appeal. See 28 U.S.C. 1911, 1913, 1914, 1917, 1926; Fed. R. App. P. 3(e). However, under the *in forma pauperis* statute, a court may allow a litigant to proceed "without prepayment of fees or security therefor" if the litigant establishes that he is unable to pay the required fees. 28 U.S.C. 1915(a)(1). Before 1996, indigent prisoners could rely on that provision to file a federal-court lawsuit without paying any filing fees.

Concerned with the increasing volume of prisoner litigation in the federal courts, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66. The PLRA reflects Congress's judgment that the federal courts need "fewer and better prisoner suits." *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). To that end, Congress provided that a prisoner who has been granted *in forma pauperis* status cannot avoid payment of filing fees altogether. Pet. App. 5a. Instead, the prisoner is obligated to "pay the full amount of a filing fee" for each civil action or appeal. 28 U.S.C. 1915(b)(1).

To satisfy that requirement, the PLRA provides that the prisoner shall make an initial partial payment followed by regular monthly installment payments. The PLRA sets forth formulas to determine the amounts of those payments. The "initial partial filing fee" is 20 percent of the greater of the "average monthly deposits" into the prisoner's trust account or the "average monthly balance" in that account during

the past six months. 28 U.S.C. 1915(b)(1). The "monthly payment[]" is "20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). The monthly payments must be forwarded "to the clerk of the court" by "[t]he agency having custody of the prisoner" each month "until the filing fees are paid." *Ibid.*

The prisoner need not make an initial partial payment at the start of a lawsuit or appeal if he has no funds available. See 28 U.S.C. 1915(b)(4) ("In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); see also 28 U.S.C. 1915(b)(1) (requiring collection of the initial payment only "when funds exist"). In addition, no monthly payments are required unless the prisoner has more than $10 in his trust account. 28 U.S.C. 1915(b)(2).

2. This case arises out of a lawsuit filed by federal prisoner Jeremy Pinson in the United States District Court for the District of Columbia. Pet. App. 2a-3a. Pinson is serving a 20-year sentence for threatening the President and other offenses, and he "has made frequent use of the federal courts during his time in prison," filing "more than 100 civil actions and appeals." *Id.* at 2a.

In this lawsuit, Pinson sued various Federal Bureau of Prisons (BOP) officials (respondents in this Court) to challenge his placement in a special management unit in his prison. Pet. App. 2a-3a.[1] The

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[1] Respondents were named as defendants in their official and individual capacities, see J.A. 22-23, but no summonses were issued

district court concluded that venue was inappropriate and transferred the case to the Northern District of Alabama, where Pinson was incarcerated. *Id.* at 3a; see J.A. 29-30.

3. Pinson filed a motion for reconsideration of the transfer order, which the district court denied, J.A. 31-33, and then filed a notice of appeal, which the court of appeals construed as a petition for mandamus, Pet. App. 3a-4a; J.A. 34-36. Pinson applied for *in forma pauperis* status and asked the court of appeals to stay collection of filing fees on the ground that he is already paying 20 percent of his monthly income for filing fees owed in another case. Pet. App. 4a; see J.A. 37-59.

Petitioner is a federal inmate who is serving a 15-year sentence for armed kidnapping and assault with the intent to kill. See 2003 FEL 6805 Judgment at 1 (D.C. Super. Ct. Nov. 1, 2004). He is also a frequent litigant. Petitioner has filed numerous federal lawsuits while imprisoned, including several that were dismissed as frivolous or malicious or for failure to state a claim. See pp. 40-41 & n.14, *infra*.

Petitioner and numerous other federal prisoners sought to join Pinson's lawsuit as co-petitioners. Pet. App. 4a-5a; J.A. 60-62.[2] After expending significant effort to determine which of those individuals wished to participate in the case, the court of appeals added petitioner (and three other prisoners) to the lawsuit. Pet. App. 4a-5a; J.A. 72-75, 78-79.

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in the district court, and no respondent has been served. Respondents appear here only in their official capacity.

[2] Pinson contended that these individuals sought to join the case in the district court, Pet. App. 4a, but the court of appeals found "no evidence" of such a request, *id.* at 10a.

Petitioner sought *in forma pauperis* status and joined Pinson's motion to stay the collection of filing fees. Pet. App. 4a-5a; J.A. 80-106. Petitioner stated that he had previously incurred obligations for filing fees in other cases under the PLRA. J.A. 106. As a result, he (like Pinson) contended that he should not be required to make any monthly payments towards the filing fees in this case until his prior fee obligations were satisfied.

4. The court of appeals declined to stay collection of the filing fees and dismissed petitioner's claims for lack of standing. Pet. App. 1a-18a. The court first concluded that Pinson could not proceed *in forma pauperis* because he had accumulated three "strikes" in previous litigation. *Id.* at 5a-8a; see 28 U.S.C. 1915(g).

Turning to petitioner, the court of appeals granted him *in forma pauperis* status, which meant that he could pay his filing fees in installments rather than upfront. Pet. App. 8a. But the court rejected petitioner's argument about how his monthly payments should be calculated. The court observed that there are two possible approaches to calculating a prisoner's monthly payment under 28 U.S.C. 1915(b)(2): the per-prisoner approach, where a prisoner pays 20 percent of his monthly income regardless of how many cases he has filed, and the per-case approach, where a prisoner pays 20 percent of his monthly income for each case that he has filed. Pet. App. 12a-13a. The court concluded that the per-case approach best comports with the statute's text, structure, and purposes. *Id.* at 14a-17a.

The court explained that the statute's text and structure "indicate that its provisions apply *to each*

action or appeal filed by a prisoner." Pet. App. 14a. The first part of the statute, subsection (b)(1), uses the singular to refer to a prisoner's "threshold obligation to make an initial partial payment": if a prisoner brings "a civil action" or files "an appeal," the court must collect "an initial partial filing fee." *Ibid.* (quoting 28 U.S.C. 1915(b)(1)). This language, the court observed, "calls for assessment of the initial partial filing fee *each time* a prisoner brings a civil action or files an appeal." *Id.* at 14a-15a (citation and internal quotation marks omitted); see *id.* at 15a (noting that there is no dispute between the parties "that the initial partial filing fee accrues in each case, regardless of the number of suits initiated").

The court then explained that the "initial partial filing fee" set out in subsection (b)(1) is the "triggering condition" for subsection (b)(2), which requires the monthly payments. Pet. App. 15a (citation omitted). "Given that the initial fee required by subsection (b)(1) applies on a per-case basis," the court reasoned, "it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Ibid.* The court noted that its conclusion is "fortifie[d]" by other parts of Section 1915, which also refer to a single case. *Id.* at 15a-16a.

The court concluded that the per-case approach best serves the PLRA's purpose of deterring frivolous prisoner lawsuits. Pet. App. 17a. The PLRA "was designed to deter prisoners from filing frivolous lawsuits, which waste judicial resources and compromise the quality of justice enjoyed by the law-abiding population," *ibid.* (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011) (per curiam)), and if the statute were read to "[c]lap[] monthly withdrawals at twenty per-

cent of an inmate's income, regardless of the number of suits filed," there would be little "deterrent effect" after the prisoner files his first action. *Ibid.*

Finally, the court rejected petitioner's argument that the per-prisoner approach is necessary to avoid concerns about access to the courts. The court noted that the PLRA contains a safety valve that allows a prisoner with no assets to proceed without paying an initial filing fee. Pet. App. 16a (discussing 28 U.S.C. 1915(b)(4)). And, the court observed, the statute requires monthly payments only when the prisoner has more than $10 in his account. *Id.* at 16a-17a (discussing 28 U.S.C. 1915(b)(2)). As a result, "even if 100 percent of a prisoner's income were subject to recoupment for filing fees, the statute assures his ability to initiate an action" (so long as no other statutory bar, such as the three-strikes provision, applies). *Id.* at 17a.

5. The court of appeals then entered a series of orders setting out the amounts petitioner must pay for this case. Pet. App. 19a-30a.[3]

SUMMARY OF ARGUMENT

A prisoner proceeding *in forma pauperis* who files more than one action or appeal in federal court must

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[3] The court of appeals assumed that each of the five co-petitioners should pay a proportionate share of the filing fees. See Pet. App. 24a, 28a. Other circuits have required each prisoner in a multi-prisoner case to pay the full filing fees. See *Hagan* v. *Rogers*, 570 F.3d 146, 155-156 (3d Cir. 2009); *Boriboune* v. *Berge*, 391 F.3d 852, 855-856 (7th Cir. 2004); *Hubbard* v. *Haley*, 262 F.3d 1194, 1197-1198 & n.2 (11th Cir. 2001), cert. denied, 534 U.S. 1136 (2002); but see *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999). The government has not sought review of the proportionate-share issue from this Court.

make monthly payments for each of those actions or appeals under 28 U.S.C. 1915(b)(2).

A. Section 1915(b) sets out the rules for payment of filing fees by *in forma pauperis* prisoners. It provides that when such a prisoner "brings a civil action or files an appeal," he is "required to pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1). That fee is paid through an installment plan: the prisoner pays "an initial partial filing fee" of 20 percent of his average monthly deposits or income (whichever is greater), followed by "monthly payments" of 20 percent of his preceding month's income. 28 U.S.C. 1915(b)(1) and (2).

The statute's text indicates that the monthly payments, like the initial partial payment, are to be assessed on a per-case basis. Section 1915(b) is written in the singular: for "*a* civil action" or "*an* appeal," an inmate must make "*an* initial partial" payment and regular "monthly payments," sent by the inmate's custodian to "*the* clerk of the court." 28 U.S.C. 1915(b)(1) and (2) (emphases added). Further, the parts of Section 1915(b) that refer to the initial payment and monthly payments are textually linked: "After payment of the initial partial filing fee," the prisoner is required to make "monthly payments" towards the full amount of filing fees. 28 U.S.C. 1915(b)(2). Because payment of the initial partial filing fee is the "triggering condition for the monthly installments," both the initial partial payment and the monthly payments should be assessed on a per-case basis. Pet. App. 15a (citation and internal quotation marks omitted).

Petitioner agrees (Br. 17) that initial partial payments should be assessed on a per-case basis, but he

contends that the language about monthly payments refers to all cases an inmate has filed, so that the inmate need only pay 20 percent of his income monthly no matter how many cases he has filed. That reading cannot be squared with the statute's text, which consistently refers to a single case or appeal. Indeed, petitioner's approach assumes that Congress shifted from the perspective of a single case to all of a prisoner's cases in the middle of a sentence (the first sentence in subsection (b)(2)), with no textual indication that such a shift was intended.

Petitioner argues (Br. 16-21) that the statute limits an inmate's monthly payments for all cases to 20 percent of his income when it states that the inmate's custodian shall send monthly payments to "the clerk of the court" each month until the "filing fees" are paid. 28 U.S.C. 1915(b)(2). In petitioner's view, the reference to "filing fees" (plural) signifies an intention to refer to all of a prisoner's cases. But multiple fees can (and typically do) apply in a federal lawsuit or appeal, and other provisions in Section 1915(b) reflect that Congress understood as much. There is no reason to assume that Congress intended to encompass all of an inmate's lawsuits and appeals when it wrote language referring to a single action or appeal.

B. The broader statutory context confirms that both initial partial payments and monthly payments should be made on a per-case basis. Section 1915 sets out rules and procedures for proceeding *in forma pauperis* in the federal courts. The statute is written from the perspective of a single action or appeal. It provides that the court may authorize "*the* commencement, prosecution or defense" of a "*suit, action* or *proceeding*" or "*appeal*" when a prisoner provides

"*an* affidavit" demonstrating his indigence and "*a* certified copy" of his prison account statement. 28 U.S.C. 1915(a) (emphases added). It then provides that a prisoner must pay the filing fees for "*a* civil action" or "*an* appeal" through an initial payment and monthly installment payments. 28 U.S.C. 1915(b)(1) and (2) (emphases added). The court may dismiss "*the* case at any time" if "*the* allegation of poverty is untrue" or "*the* action or appeal" is frivolous, malicious, fails to state a claim, or seeks relief from a defendant with immunity. 28 U.S.C. 1915(e)(2) (emphases added). The court may award costs at the conclusion of "*the* suit or action" and if costs are awarded against the prisoner, "the prisoner shall be required to pay *the* full amount of the costs ordered," using the same installment plan set out for filing fees. 28 U.S.C. 1915(f)(1) and (2)(A) (emphases added). And the prisoner may not bring "*a* civil action" or "*appeal* a judgment" if he has three strikes. 28 U.S.C. 1915(g) (emphases added). The fact that the statute is written from the perspective of a single action or appeal reinforces that the monthly-payment provision should be read that way as well.

This Court's recent decision in *Coleman* v. *Tollefson*, 135 S. Ct. 1759 (2015), supports that reading of the text. In deciding whether a decision that had been appealed counts as a strike for purposes of the three-strikes rule, the Court recognized that the statute refers to a single stage of litigation, not multiple stages of litigation. *Id.* at 1763. The Court noted that Section 1915(g) refers to an action by "a single court" and so the Court declined to group multiple courts into "a single entity." *Id.* at 1763-1764. Just as the Court refused to read Section 1915(g) to refer to

multiple stages in *Coleman*, it should refuse to read Section 1915(b) to refer to multiple cases here.

C. The per-case approach to Section 1915(b) best furthers the PLRA's purposes. Congress enacted the PLRA in response to an onslaught of frivolous prisoner litigation. Those frivolous lawsuits tied up the courts and imposed substantial costs on taxpayers. See 141 Cong. Rec. 26,548, 26,553 (1995) (statements of Sens. Dole and Hatch). The existing *in forma pauperis* statute was inadequate to prevent those lawsuits, because it imposed no economic disincentive to going to court.

The per-case approach furthers Congress's core purpose of deterring prisoner lawsuits by providing that economic disincentive. By requiring *in forma pauperis* prisoners to pay the full amount of their filing fees through an installment plan, the PLRA "force[s] prisoners to think twice about the case and not just file reflexively." 141 Cong. Rec. at 14,572 (statement of Sen. Kyl). Each time an inmate files a new action or appeal, he must make both an initial payment and ongoing monthly payments towards the filing fees (assuming he has funds available).

Petitioner's approach disserves the PLRA's purposes because it permits a prisoner to bring as many actions or appeals as he likes without paying any additional monthly amount. Petitioner says that under his approach, a prisoner eventually will pay for his second and subsequent lawsuits because he will start payments for a second or subsequent lawsuit after he has finished paying for the first one. But a prisoner may never pay off the filing fees for his first case (especially if he is released from prison while making the payments), and in the meantime, there would be little

deterrent to his filing more lawsuits. That deterrent remains sorely needed, because prisoner litigation continues to "represent[] a disproportionate share of federal filings." *Coleman*, 135 S. Ct. at 1762. Petitioner himself has filed or joined at least 17 federal lawsuits or appeals (in addition to this one) while a federal prisoner.

D. Considerations of administrative convenience do not favor petitioner's interpretation. When the statute is applied as written, each court where a prisoner files an action or appeal requires an initial partial payment and directs the custodian to forward monthly payments until the full filing fees are paid. Each time the prisoner files a new action or appeal, the relevant court undertakes this process. The custodian then pays the initial amount specified and makes monthly payments so long as there is more than $10 available in the prisoner's account.

Petitioner agrees that an inmate's custodian should make initial partial payments for each case filed but contends that the custodian should only make one monthly payment. That requires the custodian to decide which court to pay or requires courts to coordinate amongst themselves to sequence the payments. And the statute is silent about how that coordination should occur. Rather than invite disputes about priority of payments, the Court should read the statute as written and require a prisoner to make monthly payments for each action or appeal he has filed (so long as there is more than $10 available in his account).

E. The constitutional-avoidance canon has no application in this case. A prisoner has no general constitutional right to obtain a waiver of court fees; only in rare cases, such as those involving fundamental

rights, could a person plausibly assert such a constitutional claim. See *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 114 (1996). And even if there were such a general right, the per-case approach would not infringe it, because the statute permits a prisoner to file a lawsuit even if he has no funds available. See 28 U.S.C. 1915(b)(4). Requiring prisoners to pay for their use of the courts when they have funds available does not raise a serious constitutional question. The judgment of the court of appeals should be affirmed.

ARGUMENT

MONTHLY PAYMENTS FOR *IN FORMA PAUPERIS* PRISONERS UNDER 28 U.S.C. 1915(b)(2) SHOULD BE CALCULATED ON A PER-CASE BASIS

The Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66, requires prisoners to pay the costs of their federal-court litigation through an initial payment and monthly installment payments. The question in this case is whether an inmate who files multiple actions or appeals should have to make monthly payments for each of them. Petitioner contends that, no matter how many lawsuits a prisoner has filed, he need only pay 20 percent of the money in his prison account each month to cover his court fees. He is mistaken. The statute's text, context, history, and purposes all demonstrate that a prisoner who has filed more than one case should make a separate monthly payment for each case filed.

A. The Text Of Section 1915(b) Indicates That Both Initial And Monthly Payments Are Assessed On A Per-Case Basis

As in any other statutory interpretation case, this Court's inquiry begins "with the language of the stat-

ute itself." *Caraco Pharm. Labs., Ltd.* v. *Novo Nordisk A/S*, 132 S. Ct. 1670, 1680 (2012) (citation omitted). The words of the particular provision at issue "must be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Here, the PLRA's text and structure strongly support use of the per-case method for assessing both initial payments and ongoing monthly payments of filing fees.

1. Section 1915(b) sets out the rules for payment of filing fees by prisoners proceeding *in forma pauperis* in federal court. It provides that when "a prisoner brings a civil action or files an appeal in forma pauperis," he "shall be required to pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1). By its terms, the obligation to pay the filing fees applies independently to each stage of a case—meaning that a prisoner must pay the full filing fees for filing a lawsuit and for any appeal. See also *Coleman* v. *Tollefson*, 135 S. Ct. 1759, 1763 (2015) (the statute "treats the trial and appellate stages of litigation as distinct").

The filing fees are to be collected through an installment plan—the prisoner makes an initial "partial payment" followed by regular "monthly payments." 28 U.S.C. 1915(b)(1) and (2). Subsection (b)(1) addresses the initial payment, and subsection (b)(2) addresses the monthly payments.

Subsection (b)(1) states that "[t]he court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law," "an initial partial filing fee." 28 U.S.C. 1915(b)(1). It then specifies how to calculate that initial amount: it is "20 percent of the greater of" the average monthly deposits

in the prisoner's account or the average monthly balance of the account over the preceding six months. *Ibid.*

Subsection (b)(2) explains what happens next. "After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). The "agency having custody of the prisoner" forwards that amount "to the clerk of the court" each month, so long as "the amount in the [prisoner's] account exceeds $10." *Ibid.*

Subsections (b)(3) and (b)(4) explain what happens when a prisoner has substantial funds, or no funds at all. Subsection (b)(3) provides that payment toward the initial filing fee is limited to "the amount of fees permitted by statute." 28 U.S.C. 1915(b)(3); see pp. 23-24, *infra*. Subsection (b)(4) provides that, if a prisoner "has no assets and no means by which to pay the initial partial filing fee," he may still file an action or appeal. 28 U.S.C. 1915(b)(4).

2. The question in this case is how the monthly payment amount should be calculated when an inmate has filed more than one action or appeal. There are two possible approaches. Under the "per-prisoner" approach, the prisoner pays 20 percent of his prior month's income, no matter how many cases he has filed. Pet. App. 12a. Under the "per-case" approach, the prisoner pays 20 percent of his prior month's income for each action or appeal he has filed (subject to the statute's $10 threshold). *Id.* at 13a.

The statutory text dictates the per-case approach. Both subsection (b)(1) and subsection (b)(2) are written in the singular, referring to what happens in a

single lawsuit or appeal. The statute begins: "if a prisoner brings *a civil action* or files *an appeal* in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1) (emphases added). That amount consists of "*an initial partial filing fee*" plus "monthly payments" towards the remainder of the debt. 28 U.S.C. 1915(b)(1) and (2) (emphasis added). Congress's consistent use of the singular—"a civil action," "an appeal," "an initial partial filing fee"—shows that Congress was setting out the amounts to be paid for a single proceeding (*i.e.*, one lawsuit or appeal), not the amounts to be paid for multiple proceedings.

Further, these two parts of Section 1915 are linked. As the court of appeals explained, "the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2)." Pet. App. 15a (citation omitted). That is, subsection (b)(1) sets out the initial payment amount, then subsection (b)(2) provides: "*After payment of the initial partial filing fee*, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2) (emphasis added). Accordingly, when subsection (b)(2) refers to "monthly payments," it plainly is referring to the regular installment payments that are due to pay off the balance of the filing fees for a single action or appeal that were not covered by the initial payment prescribed in subsection (b)(1).

That conclusion is reinforced by the text explaining how the initial payment and monthly payments are made. The statute provides that "[t]he court" where the "civil action" or "appeal" has been filed should

"assess" and "collect" the initial partial filing fee. 28 U.S.C. 1915(b)(1). The statute then provides that the inmate's custodian should "forward" monthly payments from the prisoner's account "to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). The same court that "assess[es]" and "collect[s]" the initial partial filing fee under subsection (b)(1) receives the monthly payments under subsection (b)(2). See *Atchison* v. *Collins*, 288 F.3d 177, 181 (5th Cir. 2002) (per curiam) ("these terms all refer to the same court"). And since the court assesses the initial partial filing fee on a per-case basis, it follows that the same court would collect the monthly follow-up payments on a per-case basis as well.

Section 1915(b) thus establishes a single payment schedule for each single proceeding. A prisoner who files a lawsuit or an appeal must make the 20 percent initial payment, followed by monthly payments of 20 percent of the funds coming into his trust account for that lawsuit or appeal until the filing fees are paid in full. If the prisoner files multiple lawsuits, he must make the 20 percent initial payment and separate 20 percent monthly payments for every lawsuit filed.

3. Petitioner concedes (Br. 17) that subsection (b)(1) requires a separate initial partial payment of filing fees for *each* lawsuit or appeal the prisoner files. But petitioner contends (Br. 16-19) that subsection (b)(2), which refers to the monthly payments, applies not to a single case, but to *all* cases a prisoner has filed. He is mistaken.

a. Petitioner's construction of the statute requires the reader to assume that Congress shifted from the perspective of a single proceeding to the perspective

of all proceedings in the middle of a sentence. That sentence reads: "After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). All agree that the first part of the sentence—"After payment of the initial partial filing fee"—refers to a single proceeding. In petitioner's view, the second part of the sentence—"the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account"—refers to all actions or appeals the prisoner has filed.

Nothing in the statutory text supports such a reading. Both parts of the sentence refer to a single action or appeal. The first part of the sentence refers to a single case, which suggests that the second part of the sentence should as well. The two parts of the sentence are connected by a comma, which shows that once the initial condition has been met (the initial payment has been made), something else should occur in that same case (monthly payments are required to pay off the remainder of the filing fees). Reading both parts of the sentence to refer to a single action or appeal makes sense: the inmate's obligation normally does not end with the initial payment, and so Congress needed to provide a payment schedule so that the inmate could pay off the entire amount for that proceeding, as the statute requires. If Congress had intended to encompass all of a prisoner's proceedings in subsection (b)(2), it would have indicated as much.[4]

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[4] For example, Congress could have said that the custodian should "forward payments from the prisoner's account to the clerk of the court where the prisoner's first action or appeal was filed,

Congress's failure to do so confirms that subsection (b)(2) prescribes rules for each case individually.

b. Petitioner acknowledges (Br. 31) that subsections (b)(1) and (b)(2) "together establish the regime for the collection of a filing fee." But he contends (Br. 31-32) that the two provisions should not be read "in tandem" because their approaches differ. There are reasonable explanations for the differences, and none of them provides a reason to decouple the two provisions.

Petitioner notes (Br. 31-32) that the 20 percent amount for the initial partial payment is calculated using the greater of the inmate's average deposits or the average account balance while the 20 percent monthly amount is calculated based on deposits. That distinction is fully consistent with per-case interpretation of the text. It is natural to look at both income and cash on hand to determine a person's ability to make a one-time payment at a particular point in time, but to look to income to assess a person's ability to pay on an ongoing basis. And nothing about Congress's use of income as the basis for the 20 percent monthly payments breaks the textual link between subsections (b)(1) and (b)(2) or indicates an intention to have the 20 percent amount satisfy the obligations for all of an inmate's cases.

Petitioner also observes (Br. 32) that the $10 threshold applies to monthly payments but not to initial payments. But that difference exists whether monthly payments are calculated on a per-case or per-prisoner basis. Moreover, Congress reasonably chose to include the $10 threshold only for monthly pay-

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forbearing on other monthly payments until the fees for the first action or appeal have been paid."

ments, because other protections apply with respect to the initial payment, see 28 U.S.C. 1915(b)(1) and (4), and because even if the initial payment left the inmate with less than $10, that would be a one-time occurrence, rather than a recurring one.

Finally, petitioner asserts (Br. 32) that subsections (b)(1) and (b)(2) each have a different "collector." He is mistaken; both the initial payment and the monthly payments are paid by the inmate's custodian to the court where the inmate filed the action or appeal. For the initial payment, the court calculates the amount due and enters an order requiring payment, whereas for the subsequent monthly payments, the custodian calculates the amount and forwards the payment to the court (so the court need not enter a new order each month). Compare 28 U.S.C. 1915(b)(1) (court "assess[es] and collect[s]" the initial amount), with 28 U.S.C. 1915(b)(2) (custodian "forward[s] payments * * * to the clerk of the court"). But there is no difference in the payor (the custodian) or the payee (the court). See Pet. App. 21a-22a. And the language specifying how monthly payments should be made—that the custodian should remit payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added)—reinforces that monthly payments are amounts paid to a single court to satisfy a prisoner's debt for a single proceeding.

4. Petitioner's primary textual argument (Br. 16-21, 32) is that the word "fees" in the last sentence of subsection (b)(2) evidences Congress's intent to permit only one 20 percent monthly payment for all of an inmate's cases. That sentence reads: "The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court

each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). In petitioner's view (Br. 17), the use of the singular "clerk of the court" with the plural "filing fees" "indicates that a single clerk's office is to receive monthly payments even when there are numerous 'filing fees' outstanding" from several different courts.

That is incorrect. Although the statute refers to "filing fees," it does not refer to multiple lawsuits, appeals, or proceedings. Instead, the consistent judicial unit throughout Section 1915(b) is a single "action" or "appeal." 28 U.S.C. 1915(b)(1). The use of "fees" (plural) is consistent with the statute's repeated references to a single proceeding, because multiple fees can be assessed in a single case. At least two different types of fees can (and usually do) apply in a single case or appeal. Any person filing a district court action must pay the statutory filing fee set out in 28 U.S.C. 1914(a) (currently $350), as well as such "additional fees * * * as are prescribed by the Judicial Conference of the United States," 28 U.S.C. 1914(b). For most types of district court actions, the additional administrative fee is $50. See U.S. Courts, *District Court Miscellaneous Fee Schedule* (Aug. 20, 2014), http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule. Similarly, a person filing a notice of appeal must pay a statutory fee of $5 to the district court, 28 U.S.C. 1917, in addition to any other fees set by the Judicial Conference, 28 U.S.C. 1913. The Judicial Conference has imposed a $500 docketing fee for appeals. U.S. Courts, *Court of Appeals Miscellaneous Fee Schedule* (Aug. 20, 2014) (*Court of Appeals Fees*), http://www.uscourts.gov/servicesforms/fees/court-appeals-miscellaneous-

fee-schedule.[5] Because the reference to "fees" in subsection (b)(2) refers to the multiple fees due in a single case, the reference to a single "clerk of the court" makes sense: all of the fees due for commencing a particular action or appeal are paid to the (single) clerk's office where the action or appeal was filed.

Congress understood when it drafted the PLRA that multiple "fees" could be owed in a single case. Section 1915(a)(1) allows a federal court to "authorize the commencement * * * of any suit * * * or appeal therein, without prepayment of *fees* or security therefor," if the prisoner submits an affidavit explaining that he "is unable to pay such *fees*." 28 U.S.C. 1915(a)(1) (emphases added). Similarly, Section 1915(a)(2) directs a prisoner to submit a trust fund account statement if he is "seeking to bring a civil action or appeal a [civil] judgment * * * without prepayment of *fees* or security therefor." 28 U.S.C. 1915(a)(2) (emphasis added). Congress used an identical reference to "fees" in Section 1915(b)(1) when discussing the initial partial filing fee: when a prisoner files "a civil action or files an appeal" (singular), "[t]he court" (singular) shall assess and collect an initial partial filing fee "as a partial payment of any court *fees* required by law." 28 U.S.C. 1915(b)(1) (emphasis added).

Petitioner places significance (Br. 21) on Congress's description of the initial payment amount as an "initial partial filing fee," which is singular. See 28 U.S.C. 1915(b)(1)-(2). But the singular is appropriate

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[5] Although the appellate docket fee is technically payable to the court of appeals, see *Court of Appeals Fees*, by rule the district court clerk "receives the appellate docket fee on behalf of the court of appeals" along with the notice of appeal. Fed. R. App. P. 3(e).

to describe a single payment made at the outset of a case—the "*initial* partial filing fee" is a single "partial payment" towards all of the required "court *fees*" due for the action or appeal. 28 U.S.C. 1915(b)(1) (emphases added).[6]

Subsection (b)(3) uses the singular "filing fee" for the same reason. It directs: "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute" for commencing a case or filing an appeal. In that context, "the filing fee collected" refers to the initial partial filing fee, not the sum of all fees due for a proceeding. That is because without subsection (b)(3), subsection (b)(1) could be read to require the initial partial filing fee to exceed the total amount otherwise due for commencing a case (if the 20 percent amount is greater than the total amount due). See 28 U.S.C. 1915(b)(1); see also 141 Cong. Rec. at 14,572 (statement of Sen. Kyl) (noting that the initial "partial filing fee * * * may not exceed the full statutory fee"). That limitation is not necessary for the monthly payments, because they need only be made "until the filing fees are paid." 28 U.S.C. 1915(b)(2). Thus, as in subsection (b)(1), the use of the singular "fee" reflects that the initial partial filing fee is a single payment at a point in time. And subsection (b)(3) confirms that Congress used "fees" to refer to the fees due for a particular action or appeal, not fees

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[6] Congress's use of the singular in the first sentence of subsection (b)(1)—the directive that a prisoner filing an action or appeal "shall be required to pay the full amount of a filing fee," 28 U.S.C. 1915(b)(1)—is consistent with that approach, because in that context, the reference to "a" filing fee means "any" filing fee that might apply. See, *e.g.*, *Webster's Third New International Dictionary* 1 (1993) ("a" can mean "any" or "each").

for all actions or appeals. That is because it refers to "*fees* permitted by statute for the commencement of *a* civil action or *an* appeal." 28 U.S.C. 1915(b)(3).

Particularly where the rest of the filing-fee provision (and indeed, all of Section 1915) is written from the vantage point of a single action or appeal, Congress's use of "fees" in the last sentence of subsection (b)(2) provides no reason to shift the statute's focus from a single action or appeal to multiple actions or appeals.

B. The Statutory Context Confirms That Section 1915(b) Payments Are To Be Assessed On A Per-Case Basis

The words of a statute should be read "in their context and with a view to their place in the overall statutory scheme." *Davis*, 489 U.S. at 809. Here, all of 28 U.S.C. 1915 is drafted from the perspective of a single action or appeal, not from the perspective of multiple actions or appeals. That consistent vantage point reinforces that Section 1915(b)'s payment provisions apply on a per-case basis.

1. Section 1915 begins with subsection (a), which addresses how a person makes a showing of indigency so he may proceed *in forma pauperis*. The statute provides that the person must submit an affidavit demonstrating his indigency, 28 U.S.C. 1915(a)(1), and (if he is a prisoner) a certified copy of his prison trust account statement, 28 U.S.C. 1915(a)(2). The statute further provides that an *in forma pauperis* litigant may not take an appeal if the trial court certifies that it is not taken in good faith. 28 U.S.C. 1915(a)(3).

Throughout subsection (a), Congress referred to a single proceeding, rather than multiple proceedings. It provided that a court may authorize "*the* commencement, prosecution or defense" of "any *suit*,

action or *proceeding*, civil or criminal, or *appeal*" without full payment of filing fees by "*a* person who submits *an* affidavit" listing the person's assets and attesting that he is unable to pay the filing fees. 28 U.S.C. 1915(a)(1) (emphases added); see *ibid.* (affidavit "shall state the nature of *the* action, defense or appeal" (emphasis added)). By its plain text, the statute requires an affidavit for each lawsuit or appeal. The same is true for the trust account statement: when a prisoner seeks to bring "*a* civil action or appeal *a* judgment" without paying the full filing fees, he must submit "*a* certified copy of the trust fund account statement." 28 U.S.C. 1915(a)(2) (emphases added). The provision concerning bad-faith appeals likewise refers to a single case: "[*a*]*n* appeal may not be taken" if the trial court finds a lack of good faith. 28 U.S.C. 1915(a)(3) (emphasis added).

In like manner, subsection (b) sets out the schedule for an *in forma pauperis* prisoner to pay filing fees for a single proceeding. If the court grants the prisoner *in forma pauperis* status for a particular case, then the same court sets out a payment schedule for the filing fees required for that case, including both the initial payment amount and a direction to the custodian to submit monthly payments until the fees are paid. See, *e.g.*, Pet. App. 21a-22a. Those provisions, like the provisions about the affidavit and trust account statement, all refer to a single proceeding. Subsections (b)(3) and (b)(4) reinforce this understanding: the former caps the initial payment made toward fees for "*a* civil action" or "*an* appeal," 28 U.S.C. 1915(b)(3) (emphases added), and the latter permits a prisoner to bring "*a* civil action" or "ap-

peal[] *a* civil or criminal judgment" even when he has no funds, 28 U.S.C. 1915(b)(4) (emphases added).

2. The text that follows the payment provisions likewise sets out rules for prisoner litigation on a per-case basis. In subsection (c), Congress permits "*the* court" to direct the government to pay for "*the* record" (for "*the* appellate court") or "*a* transcript of proceedings" (for "*the* district court" to review magistrate-judge proceedings). 28 U.S.C. 1915(c) (emphases added). Subsection (d) authorizes "[t]he officers of *the* court" to serve process in *in forma pauperis* cases as in any other case. 28 U.S.C. 1915(d) (emphasis added). Subsection (e) provides that "[*t*]*he* court" may ask "*an* attorney" to represent an indigent litigant. 28 U.S.C. 1915(e)(1) (emphases added). It also directs "*the* court [to] dismiss *the* case at any time if *the* court determines that * * * the allegation of poverty is untrue" or that "*the* action or appeal" is frivolous or malicious, fails to state a claim, or seeks relief from a defendant with immunity. 28 U.S.C. 1915(e)(2) (emphases added); see *Coleman*, 135 S. Ct. at 1763 (explaining that 28 U.S.C. 1915(e)(2) refers to an action taken by a single court); see also 28 U.S.C. 1915A(a) (pre-docketing screening requirement applies to "*a* civil action" (emphasis added)).

Subsection (f) permits the court to award "costs at the conclusion of *the* suit or action as in other proceedings"; requires a prisoner to pay "*the* full amount" of costs if "*the* judgment" includes an award of costs; and caps the costs at "*the* amount of the costs ordered by *the* court." 28 U.S.C. 1915(f)(1), (2)(A), and (C) (emphases added). And subsection (g) provides that a prisoner may not "bring *a* civil action or appeal *a judgment*" *in forma pauperis* if he has three strikes

(meaning three occasions where his action or appeal was dismissed as frivolous or malicious or because it failed to state a claim), unless he is in imminent danger of serious physical injury. 28 U.S.C. 1915(g).

Because the provisions surrounding subsection (b)(2) all proceed from the perspective of a single case, it would be "incongruous" to interpret subsection (b)(2) to set out an amount the prisoner must pay each month "for all of his cases *in toto*." Pet. App. 16a; see, *e.g.*, *Kucana* v. *Holder*, 558 U.S. 233, 246 (2010) (provision's "statutory placement" between two other provisions, each of which included a certain limitation, suggested that the provision at issue also should be read to have included that limitation). Subsection (b)(2) is no anomaly within Section 1915; the statute is replete with language confirming that it refers to an individual case, not all of a prisoner's cases combined.

3. This Court's recent decision in *Coleman* supports that approach. In *Coleman*, the Court considered whether the dismissal of a lawsuit that had been appealed counted as a third strike under Section 1915(g). 135 S. Ct. at 1763. The Court concluded that the third dismissal does count as a strike, because that is "what the statute literally says." *Ibid.* The Court noted that the statute defines a strike as an instance where "an action or appeal" in federal court "was dismissed," and this language "describes dismissal as an action taken by a single court, not as a sequence of events involving multiple courts." *Ibid.* (citation omitted). The prisoner had argued that when Congress spoke of "an action or appeal" that "was dismissed," Congress meant to include both the action *and* the appeal, so that dismissal of an action would not count as a strike until the appeal was complete. *Ibid.* The

Court rejected that argument because the statute's text refers to an action by "a single court," and it declined to group multiple courts into "a single entity." *Id.* at 1763-1764.

Section 1915(b) likewise is written from the perspective of a single action or appeal, and petitioner seeks to interpret the monthly-payment provision as referring to multiple actions and appeals. But as this Court recognized, when the statute is written in terms of a single court's actions, it should not be broadened to refer to multiple courts' actions. 135 S. Ct. at 1763-1764. As in *Coleman*, the statute "literally says" (*id.* at 1763) that the 20 percent "monthly payments" are intended to satisfy the filing fee amount for one proceeding—"a civil action" or "an appeal." 28 U.S.C. 1915(b)(1) and (2). And just as a prisoner can accumulate two strikes for two different actions or appeals, he should also have to pay cumulative fees for those two stages. See *Newlin* v. *Helman*, 123 F.3d 429, 436 (7th Cir. 1997), cert. denied, 522 U.S. 1054 (1998), overruled in part on other grounds by *Lee* v. *Clinton*, 209 F.3d 1025, 1026-1027 (7th Cir. 2000), and *Walker* v. *O'Brien*, 216 F.3d 626, 633-634 (7th Cir.), cert. denied, 531 U.S. 1029 (2000). Accordingly, although petitioner invokes *Coleman* to support his view, Br. 19-20, the Court's decision supports the per-case approach to payment of filing fees.

4. Petitioner makes a number of additional arguments why monthly payments should not use the per-case approach that pervades the rest of Section 1915. None has merit.

a. First, petitioner contends (Br. 22-25) that monthly payments should be due on a per-prisoner basis because Congress did not expressly address the

situation of an inmate who files five or more cases. But as petitioner acknowledges (Br. 24), Congress enacted the PLRA because it was concerned about the volume of prisoner filings, and "Congress contemplated that some prisoners would file numerous lawsuits." See also pp. 33-36, *infra*. Because Congress expected some prisoners would file more than one case, yet wrote the statute from the perspective of a single case, Congress should be understood as expecting the statute to be applied each time a prisoner filed a case.

Petitioner also notes (Br. 24-25) that Congress did not expressly address what to do when a prisoner files a sixth case after already owing five separate filing fees. Congress likely expected that situation to arise infrequently because most prisoners would accrue three strikes (and therefore be required to pay the full filing fees upfront) by the time they incurred the obligation for their sixth case. See *Newlin*, 123 F.3d at 436 (making this prediction in 1997, just after the PLRA was enacted). If the three-strikes provision has not provided as much of a deterrent as Congress hoped (Pet. Br. 25 n.5), then the answer is to ensure that the filing-fee provisions do provide that deterrent, rather than allowing prisoners to file as many lawsuits as they want and make only one monthly payment.

b. Petitioner similarly errs in arguing (Br. 25-26) that the statute's application to costs favors his approach. The statute provides that, if a judgment against a prisoner includes an award of costs, the prisoner "shall be required to pay the full amount of the costs ordered," 28 U.S.C. 1915(f)(2)(A), and the prisoner is required to pay costs "in the same manner

as is provided for filing fees," 28 U.S.C. 1915(f)(2)(B).[7] Petitioner surmises (Br. 25) that the per-case approach may leave "no room for the payment of costs" if a prisoner has filed five or more lawsuits.

The statute's requirement that inmates satisfy cost awards does not undercut the per-case approach. Congress provided for costs, like filing fees, on a per-case basis: costs may be awarded in "*the* judgment" at "*the* conclusion of *the* suit," in the "same manner" as filing fees. 28 U.S.C. 1915(f) (emphases added). That provision means what it says: if a prisoner who already owes a single filing fee or cost award incurs a subsequent filing fee or cost award, the inmate will owe another 20 percent of his income toward that amount. If the inmate incurs a third cost or fee award, then he will pay 20 percent of his income towards each of those obligations. And if the inmate happens to incur a sixth fee or cost award, then the sixth obligation may be deferred because the inmate is already paying all of his income towards his obligations.

Contrary to petitioner's suggestion (Br. 26), there is nothing odd about requiring monthly payments for costs (like fees) on a per-case basis. If a prisoner has filed many actions and appeals, he may be subject to multiple orders, requiring multiple monthly payments. But the fact that the prisoner is a frequent litigant is not a reason to apply the statute more leniently.

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[7] The statutory text says costs should be paid in the same manner as fees "under subsection (a)(2)," 28 U.S.C. 1915(f)(2)(B); that is a scrivener's error, because subsection (a)(2) does not address payments for filing fees. See, *e.g.*, *Johnson* v. *McNeil*, 217 F.3d 298, 300 (5th Cir. 2000) (per curiam).

The possibility that a costs award may be large (Pet. Br. 26) likewise poses no barrier to per-case application of the statute. Indeed, in the federal experience, costs awards in unsuccessful prisoner suits are rare, and large costs awards are even more so.[8] In any event, the statute does not direct that the *amount* paid for fees and costs be the same, but only that the payments be made "in the same manner," *i.e.*, on a monthly basis using 20 percent of the inmate's income (where available).

That Congress required *in forma pauperis* prisoners to satisfy any costs awards provides no reason to favor petitioner's approach to filing fees. That is especially true because petitioner's approach (which requires payment of initial filing fees on a per-case basis) also could result in multiple fees and costs orders that must be satisfied simultaneously.

c. Finally, petitioner is wrong to suggest (Br. 27-31) that the per-case method undermines the $10 threshold in 28 U.S.C. 1915(b)(2). In petitioner's view, the per-case approach to monthly payments could result in a prisoner being left with no funds, whereas

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[8] Costs are not awarded automatically; rather, the prevailing party must seek costs. See 28 U.S.C. 1920 (requiring prevailing party to file a "bill of costs"). Many prisoner lawsuits are dismissed early in the litigation, before substantial costs are incurred. See *ibid.* (costs that may be taxed include filing fees, fees for transcripts, fees for printing and witnesses, and fees for certain experts and interpreters). As a result, the federal government generally does not seek costs against *in forma pauperis* prisoners. There are cases in which state entities have sought costs against state prisoners in federal court, see, *e.g.*, *Johnson*, 217 F.3d at 299, but even then costs awarded can be quite small. See, *e.g.*, *id.* at 299-300 (awarding $24 in costs); *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999) (awarding $20.50 in costs).

his approach always leaves a prisoner with at least $6. He is mistaken on both counts.

As an initial matter, the government disagrees with petitioner's interpretation of the $10 threshold. The provision requires payment of filing fees and costs "each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). The BOP has interpreted that provision to mean that a prisoner must always have $10 remaining in his account. Accordingly, the BOP only makes payments from a prisoner's account if, after the 20 percent amount is removed, at least $10 would remain. Although the statute could be read to permit the custodian to begin making withdrawals when a prisoner's account balance exceeds $10 and potentially use all of the funds in the account (if a prisoner has five or more fees or costs obligations), the better reading is that Congress intended that the inmate always be left with at least $10 in his account. Several courts of appeals have proceeded on this assumption. See, *e.g.*, *Skinner* v. *Govorchin*, 463 F.3d 518, 523-524 (6th Cir. 2006) (stating that the prison may remit monthly payments "so long as $10 remains in the account each month").

Even if the statute were read to permit the prison to make a payment that would take the account balance under $10, it would not lead to multiple payments as petitioner suggests. The statute directs the prison to forward payments "to the clerk of the court *each time* the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2) (emphasis added). Because the $10 threshold must be considered "each time" the prison must forward a monthly payment, even if the first payment is allowed despite the fact that it would take the balance below $10 (be-

cause the account balance was above $10 before the payment was applied), the second payment would not be allowed (because after the first payment has been taken out, less than $10 remains in the account).

Petitioner also is wrong to assert (Br. 29) that his approach would always leave a prisoner with at least $6 in his account. That is because, even under petitioner's approach, the prisoner must pay the initial partial filing fees, and those fees are not subject to a $10 threshold. And even if the per-case approach dipped into the $10 cushion to a materially greater extent than the per-prisoner method, that result is consistent with Congress's intention that prisoners make a financial contribution towards each sequential lawsuit. The PLRA's inclusion of the $10 threshold simply provides no reason to adopt petitioner's reading of Section 1915(b)(2).

C. The Per-Case Approach To Section 1915(b) Best Furthers The PLRA's Purposes

This Court has consistently interpreted the PLRA mindful of its purposes. See, *e.g.*, *Coleman*, 135 S. Ct. at 810; *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). The per-case approach best serves Congress's purpose of deterring frivolous prisoner lawsuits by requiring an additional financial commitment for each action or appeal a prisoner files. Petitioner's approach would permit a prisoner to file as many lawsuits as he desires after his first suit without paying any additional monthly amount.

1. Since 1892, Congress has permitted indigent litigants to proceed *in forma pauperis* in federal court. See Act of July 20, 1892, ch. 209, 27 Stat. 252; see also *Coleman*, 135 S. Ct. at 1761. In the mid-1990s, Congress became concerned about the increasing volume

of prisoner litigation in the federal courts. Prisoner lawsuits "represented a disproportionate share of federal filings," *Coleman*, 135 S. Ct. at 1762, and many of them were "completely without merit," 141 Cong. Rec. at 26,553 (statement of Sen. Hatch). These frivolous lawsuits "tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens." *Id.* at 26,548 (statement of Sen. Dole).

Congress responded to this concern by enacting the PLRA in 1996.[9] The core purpose of the PLRA was to "deter prisoners from filing frivolous lawsuits." Pet. App. 17a (citation omitted); see, *e.g.*, 141 Cong. Rec. at 27,042 (statement of Sen. Hatch) (PLRA was designed to stop "the endless flow of frivolous litigation"); *id.* at 26,548 (statement of Sen. Dole) (PLRA was a response to the "alarming explosion in the number of lawsuits filed by State and Federal prisoners"). To further that purpose, Congress "placed a series of controls on prisoner suits." *Skinner* v. *Switzer*, 562 U.S. 521, 535 (2011). Those controls include the requirement that prisoners exhaust administrative remedies, see 42 U.S.C. 1997(e) (PLRA § 803(d), 110 Stat. 1321-71); the requirement that courts conduct initial screenings of prisoner suits to filter out those that are frivolous, malicious, or lack merit, see 28 U.S.C. 1915A

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[9] The PLRA was enacted as an amendment to an appropriations bill, H.R. 3019 (introduced in the Senate as S. 1594), during the second session of the 104th Congress. During the first session of the 104th Congress, Senators Dole, Hatch, and Kyl introduced this same language as freestanding bills, S. 1495 (Dec. 21, 1995), S. 1279 (Sept. 27, 1995), and S. 866 (May 25, 1995), and as an amendment to another appropriations bill, H.R. 2076, see 141 Cong. Rec. at 26,987. Congress debated this language at several points during the 104th Congress, as noted in the text.

(PLRA § 805, 110 Stat. 1321-75); the revocation of *in forma pauperis* status for an inmate with three "strikes," see 28 U.S.C. 1915(g) (PLRA § 804(d), 110 Stat. 1321-74); and (as relevant here) the requirement that prisoners pay the full filing fees (and costs, if awarded by the court) for their actions and appeals, see 28 U.S.C. 1915(b) and (f) (PLRA § 804(a) and (c), 110 Stat. 1321-73, 1321-74). See generally *Crawford-El* v. *Britton*, 523 U.S. 574, 596-597 (1998) (summarizing the PLRA's reforms).

Congress also included provisions designed to ensure that the small number of inmates with meritorious claims could proceed. For example, Congress allowed an inmate to proceed with a lawsuit even if he lacks the necessary funds, see 28 U.S.C. 1915(b)(4), and it authorized an exception to the three-strikes rule if an inmate is in imminent danger of serious physical injury, see 28 U.S.C. 1915(g). But the overwhelming purpose of the PLRA was to deter litigation by prisoners in federal court.

The filing-fee provisions at issue are a centerpiece of the PLRA. Frivolous prisoner suits had proliferated because prisoners could litigate for free. "As indigents, prisoners are generally not required to pay the fees that normally accompany the filing of a lawsuit," and as a result, "there is no economic disincentive to going to court." 141 Cong. Rec. at 14,571 (statement of Sen. Dole). If prisoners "know that they will have to pay these costs" then "they will be less inclined to file a lawsuit in the first place." *Ibid.* Accordingly, Congress decided to "require prisoners who file lawsuits to pay the *full amount* of their court fees and other costs." *Ibid.* (emphasis added). Although several parts of the PLRA were designed to deter frivo-

lous prisoner lawsuits, only the filing-fee and costs provisions in Section 1915 provide the economic disincentive that Congress sought to impose.

2. The per-case interpretation of Section 1915(b) furthers Congress's core purpose by ensuring that there is an "economic downside to going to court." 141 Cong. Rec. at 14,571 (statement of Sen. Dole). Congress was aware that some inmates would bring multiple lawsuits. See, *e.g.*, *id.* at 14,573 (statement of Sen. Kyl) (noting the need to deter "multiple filings"); *ibid.* (reprinting Wall Street Journal article that cited examples of three prisoners who filed over 100 lawsuits each). By requiring those inmates who filed more lawsuits to pay more money, Congress ensured that prisoners (like any other litigant) would stop and ask, "Is the lawsuit worth the price?" *Id.* at 14,572 (statement of Sen. Kyl).[10]

The per-prisoner approach, by contrast, thwarts Congress's core purpose. Whether an inmate has filed one lawsuit or 100 lawsuits, he need only pay 20 percent of his monthly income towards filing fees. As a

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[10] Petitioner contends (Br. 22-24) that this deterrence does not occur because the statute provides insufficiently "clear warning" that a prisoner who files additional lawsuits must pay additional amounts. He is wrong about the statute's text, see pp. 13-24, *supra*, and he was provided with specific notice that "an amount equal to 20% of each month's income" would be debited from his trust account for this case, J.A. 95-96. In any event, any ambiguity will be resolved by this Court's decision. See *Woodford* v. *Ngo*, 548 U.S. 81, 95 (2006) (although statutory-construction issue divided the circuits, Court concluded that its chosen approach would deter frivolous claims).

result, a prisoner has little economic disincentive to pursue as many lawsuits as he likes.[11]

Petitioner responds (Br. 38-39) that his approach does not permit a prisoner to avoid paying the filing fees for all of his cases, it simply delays the payments. But permitting a prisoner to delay making payments for any second or subsequent lawsuit limits the deterrent effect of the statute. The PLRA is designed to require a prisoner to "bear some marginal cost for each legal activity"; "[u]nless payment begins soon after the event that creates the liability, this will not happen." *Newlin*, 123 F.3d at 436; see *Christensen* v. *Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 Fed. Appx. 821, 829-830 (10th Cir. 2010) (unpublished) ("[T]he overarching purpose of the statute, to restrain runaway prison litigation with some pay-as-you-go constraint, would be diluted if not defeated by permitting prisoners with one ongoing case to postpone all successive filing fee obligations."). As petitioner notes (Br. 37), many prisoners earn low wages, and so it may take a long time for them to pay off the first filing fee. And a prisoner may avoid making his extended monthly payments entirely, because he may be released before he has finished paying for his first case, and many courts have held that an *in forma pauperis* prisoner need not continue to make monthly payments

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[11] Petitioner acknowledges (Br. 17) that a prisoner must make an initial partial payment for each action or appeal he files. As a result, there would be some cost to each new proceeding under his approach. But that is a one-time cost, and it may be quite minimal. See Pet. App. 21a (petitioner's initial partial filing fee was $0.64). By contrast, an ongoing monthly obligation that applies until all filing fees are paid is a significant economic deterrent to filing a frivolous suit.

once he has been released from prison.[12] Even if the payment obligation continued to apply after a prisoner was released, the inmate may still avoid payment because the PLRA does not provide a mechanism for collecting fees from prisoners who have been released. See 28 U.S.C. 1915(b)(2) (directing the prison "having custody of the prisoner" to collect the monthly payments from the prisoner's account). In practice, then, petitioner's approach would provide little economic disincentive to filing a second or successive prisoner lawsuit.

3. Petitioner contends (Br. 40-42) that monthly payments need not be assessed on a per-case basis because other portions of the PLRA sufficiently deter frivolous filings. He is wrong.

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[12] See, *e.g.*, *Brown* v. *Eppler*, 725 F.3d 1221, 1230-1231 & n.7 (10th Cir. 2013); *DeBlasio* v. *Gilmore*, 315 F.3d 396, 399 (4th Cir. 2003); *In re Smith*, 114 F.3d 1247, 1252 (D.C. Cir. 1997); *McGore* v. *Wrigglesworth*, 114 F.3d 601, 612-613 (6th Cir. 1997), abrogated on other grounds by *LaFountain* v. *Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *Robbins* v. *Switzer*, 104 F.3d 895, 897-898 (7th Cir. 1997); *McGann* v. *Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996); see also *Gay* v. *Texas Dep't of Corr. State Jail Div.*, 117 F.3d 240, 241-242 (5th Cir. 1997) (stating that "a person who files a notice of appeal while in prison is subject to the filing-fee requirements of the PLRA despite subsequent release from prison," but also stating that it "join[ed] the Seventh Circuit," which permits a prisoner who has been released to forego additional payments if he qualifies for *in forma pauperis* status).

Petitioner contends (Br. 39 n.10) that, after a prisoner is released, he will still be liable for monthly payments that "came due but were not paid during incarceration." But that would provide little deterrent under petitioner's approach, because no monthly payments would be due for a second or subsequent case until the prisoner pays off the first obligation.

Although the PLRA has improved the situation in the federal courts, the problem of frivolous prisoner litigation remains acute. Prisoner litigation continues to "account for an outsized share of filings in federal district courts." *Jones*, 549 U.S. at 203 (citation and internal quotation marks omitted). In fiscal year 2014, state and federal prisoners filed over 32,000 prison conditions and civil rights cases in federal district court, which accounts for about 11 percent of all civil cases filed. See U.S. Courts, *Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending September 30, 2014*, at 1, http://www.uscourts.gov/uscourts/statistics/table/c-3/judicial-business/2014/09/30 (last visited Sept. 21, 2015); cf. *Jones*, 549 U.S. at 202 (in 2005, these lawsuits accounted for about 10 percent of civil cases). Although early statistics suggested that the PLRA was "having its intended effect," *Crawford-El*, 523 U.S. at 597, more recent data confirms that frivolous prisoner lawsuits remain a serious problem.[13]

The PLRA's requirement that prisoners pay full filing fees for every federal case remains an important deterrent. Other portions of the PLRA, such as the three-strikes provision, no doubt deter some frivolous

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[13] Prisoners have filed at least 25,000 civil rights and prison conditions lawsuits every year for the last five years. See U.S. Courts, *Table C-2A, U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 2009 Through 2014*, at 3 (*2014 Table C-2A*), http://www.uscourts.gov/statistics/table/c-2a/judicial-business/2014/09/30 (last visited Sept. 21, 2015). Compare *Crawford-El*, 523 U.S. at 597 n.18 (reporting 28,635 prisoner civil rights and prison conditions suits in fiscal year 1997), with *2014 Table C-2A*, at 3 (reporting 32,036 such suits in fiscal year 2014).

filings. But only the filing-fee and costs provisions in Section 1915(b) provide an *economic* deterrent to filing additional lawsuits. This Court has long recognized that "an economic incentive" provides a critical means of preventing "frivolous, malicious, or repetitive lawsuits." *Neitzke* v. *Williams*, 490 U.S. 319, 324 (1989). Congress made the same judgment in the filing-fee provisions of the PLRA.

This case illustrates the need for a financial deterrent. In addition to this case, petitioner has filed or joined at least 17 federal lawsuits or appeals that raise civil rights or prison conditions claims—including three new lawsuits he filed while this case has been pending before this Court.[14] He has not been deterred

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[14] See *In re Pinson*, No. 14-5139 (D.C. Cir. filed June 9, 2014); *Bruce* v. *BOP*, No. 13-1127 (10th Cir. filed Apr. 4, 2013); *Bruce* v. *Reese*, No. 10-14896 (11th Cir. filed Oct. 25, 2010); *Bruce* v. *BOP*, No. 15-cv-01780 (D. Colo. filed Aug. 17, 2015); *Bruce* v. *Cermak*, No. 15-cv-00540 (D. Colo. filed Mar. 16, 2015); *Bruce* v. *BOP*, No. 15-cv-00239 (D. Colo. filed Feb. 4, 2015); *Bruce* v. *Alvarez*, No. 14-cv-03232 (D. Colo. filed Nov. 26, 2014); *Bruce* v. *Osagie*, No. 14-cv-02068 (D. Colo. filed July 24, 2014); *Bruce* v. *Denney*, No. 14-cv-03026 (D. Kan. filed Feb. 10, 2014); *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. filed Jan. 24, 2014); *Bruce* v. *Dotson*, No. 13-cv-02597 (D. Colo. filed Sept. 20, 2013); *Hipps* v. *BOP*, No. 13-cv-00604 (D. Colo. filed Mar. 7, 2013); *Pinson* v. *Laird*, No. 13-cv-03033 (D. Kan. filed Feb. 28, 2013); *Bruce* v. *Wilson*, No. 13-cv-00491 (D. Colo. filed Feb. 25, 2013); *Bruce* v. *Holbrook*, No. 10-cv-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce* v. *Chambers*, No. 10-cv-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce* v. *Reese*, No. 09-cv-02378 (N.D. Ala. filed Nov. 24, 2009).

Petitioner also sought to join two other cases; joinder was denied in one case, see *Pinson* v. *Santana*, No. 13-cv-02098 (N.D. Tex. filed June 4, 2013; joinder denied Nov. 18, 2014), and the joinder motion remains pending in the other case, see *Cunningham* v. *BOP*, No. 12-cv-01570 (D. Colo. filed June 18, 2012).

by the fact that several courts have dismissed his claims as frivolous, malicious, or failing to state a claim. See Order at 5, *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. Apr. 23, 2014); Order at 1, *Bruce* v. *Denney*, No. 14-cv-03026 (D. Kan. Apr. 2, 2014); Report & Rec. at 7-12, *Bruce* v. *Wilson*, No. 13-cv-00491 (D. Colo. Oct. 7, 2013), adopted by Order at 1 (D. Colo. Nov. 4, 2013).[15] The filing-fee provisions should be interpreted to apply to each case a prisoner has filed in order to stem the tide of frivolous prisoner litigation.

4. Finally, petitioner contends (Br. 40) that requiring an inmate who has filed five or more cases to pay almost all of his income toward those obligations is too high a price. Petitioner's argument proceeds from the premise that it is normal and acceptable for prisoners to file five or more lawsuits in federal court. But that is precisely the situation the PLRA was designed to discourage.

Implementing the per-case method will not improperly deter prisoners from bringing meritorious lawsuits. Rather, a petitioner weighing whether or not to bring a second or successive suit will face the same economic deterrent he faced when deciding whether or not to bring the first suit. There is no reason to assume that Congress cared less about deterrence of an inmate's second, third, or tenth lawsuit.

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[15] Although petitioner did not have three strikes at the time he sought to join this action, see Resp. Cert. Br. 15 n.7, several courts have concluded that he does now. See *Bruce* v. *BOP*, No. 15-cv-00239, 2015 WL 4035649, at *1-*2 (D. Colo. June 30, 2015); *Bruce* v. *Osagie*, No. 14-cv-02068, 2015 WL 2443826, at *1-*2 (D. Colo. May 20, 2015); Order at 1-2, *Bruce* v. *Cermak*, No. 15-cv-00540 (D. Colo. May 18, 2015).

See Pet. App. 16a. To the contrary, Congress was particularly concerned about providing sufficient deterrence for repeat litigants. See 141 Cong. Rec. at 27,043 (statement of Sen. Reid) (discussing a prisoner who had "bragged that he filed hundreds" of lawsuits); 142 Cong. Rec. 8237 (1996) (statement of Sen. Abraham) ("Under current law, there is no cost to prisoners for filing an infinite number of such suits.").

The PLRA ensures that even a frequent litigant will be able to file a meritorious claim. Its safety-valve provision permits a prisoner to file a lawsuit even if he "has no assets and no means by which to pay the initial partial filing fee" (so long as he does not have three strikes). 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee due "when funds exist"). Accordingly, the courthouse doors remain open to a prisoner who has a meritorious claim but lacks any ability to pay the filing fees.

Petitioner's complaint is not that the per-case method prevents a prisoner from filing a meritorious lawsuit, but rather that it makes the prisoner choose between filing the lawsuit or using his funds for other purposes. But that is what Congress intended. If given the choice between requiring prisoners who filed more lawsuits to pay more of their monthly income, or allowing a prisoner who filed more lawsuits to pay only 20 percent of his monthly income no matter how many cases he has filed, the Congress that enacted the PLRA surely would choose the former.

D. Considerations Of Administrative Convenience Do Not Favor Petitioner's Interpretation

The per-case approach provides a straightforward method for making monthly payments, while petition-

er's method raises questions about how to sequence payments and which court orders should take priority.

1. Application of Section 1915(b) on a per-case basis is straightforward. Each court where an inmate files an action or appeal enters an order setting out the initial payment amount and directing the custodian to make monthly payments. The custodian receives these orders and each month, it pays the 20 percent amount for each case, leaving at least $10 in the account. If there are no funds available, the custodian does not send a payment. This is the regime set out in the statute: for each "civil action" or "appeal," the "full amount" of filing fees must be paid in installments. 28 U.S.C. 1915(b)(1) and (2). The PLRA's direction that the prison make payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added), demonstrates that Congress expected that each court would collect a monthly payment without regard to any payments being made to other courts.

Application of Section 1915(b) under petitioner's approach is more complicated. Each court where the inmate has filed suit would enter an order requiring initial and monthly payments, forcing the custodian to decide which orders to satisfy and in what order. The alternative would be for courts to coordinate with each other and decide which court should receive the monthly payment. That becomes more difficult the more cases a prisoner has filed, especially because a prisoner may not disclose all of his prior cases to the court. See, *e.g.*, J.A. 106 (petitioner's joinder motion mentioned only two of his cases). And the likely outcome of petitioner's approach is that some courts will never get paid anything. See pp. 37-38, *supra*.

It is true, as petitioner notes (Br. 50-51) that the per-case approach may require prioritizing lawsuits after the fifth one. But those will be more rare than under petitioner's approach, where some type of sequencing is necessary for any lawsuit or appeal after the first one. Even if the per-case approach becomes complicated when a prisoner files his sixth action or appeal, that is because the prisoner has filed so many cases, not because the per-case approach is inherently flawed. It would turn the PLRA on its head to interpret the statute to reward litigious prisoners because of administrative difficulties they have created.

2. Petitioner contends (Br. 49-50) that his approach is "more sensible" because it avoids sending "five checks" to "five different" courts. But petitioner's approach *does* require multiple payments; he agrees that initial filing fees should be assessed on a per-case basis. And petitioner is wrong to suggest that, if given the choice between requiring a prison to pay for postage and allowing prisoners to file nearly costless second and subsequent lawsuits, Congress would choose to save the postage. That is especially true because Congress was aware of the enormous impact prisoner lawsuits have on the state and federal fisc. See 141 Cong. Rec. at 27,042 (statement of Sen. Dole) (estimating that States spent $81 million on prisoner lawsuits in 1995).

Petitioner also expresses concern (Br. 51-53) that requiring prisoners to make monthly payments for each case creates questions about priority with other inmate financial obligations. But prisons are already accustomed to dealing with these questions, because as petitioner notes (Br. 52), an inmate who owes filing fees may also owe restitution, child support payments,

tax liens, or other financial obligations.[16] Questions about how to prioritize PLRA obligations and other financial obligations arise under petitioner's approach just as they arise under the per-case approach.[17] And in any event, petitioner provides no evidence that the PLRA was designed to maximize accommodation with state withholding schemes. There is, however, evidence that the PLRA was designed to protect States' resources by enacting a strong deterrent to frivolous litigation. See 141 Cong. Rec. at 26,553 (statement of Sen. Kyl) (explaining that the PLRA was needed because federal prisoners were imposing substantial costs on taxpayers); *id.* at 26,448 (statement of Sen. Abraham) (explaining that the "torrent of prisoner lawsuits" unnecessarily "occupy an enormous amount of State and local time and resources"). And it is the per-case approach, not petitioner's approach, that best advances that interest.

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[16] See U.S. Dep't of Justice, BOP, *Program Statement 4500.11, Trust Fund/Deposit Fund Manual* 87 (Apr. 9, 2015), http://www.bop.gov/policy/progstat/4500_011.pdf (providing for payment of financial obligations that do not require inmate's consent); U.S. Dep't of Justice, BOP, *Program Statement 5380.08, Financial Responsibility Program, Inmate* 5-7 (Aug. 15, 2005), http://www.bop.gov/policy/progstat/5380_008.pdf (providing procedures for working with inmates to pay financial obligations).

[17] Petitioner suggests (Br. 53) that his approach would always leave 80 percent of funds in an inmate's account for other obligations. That is wrong, because petitioner would allow an additional 20 percent to be paid towards costs each month, and he would pay initial partial filing fees for all of an inmate's cases, potentially leaving nothing in the account.

E. The Canon Of Constitutional Avoidance Has No Role To Play In This Case

Contrary to petitioner's contention (Br. 42-48), the canon of constitutional avoidance does not justify adopting the petitioner's approach to calculating monthly payments under Section 1915(b)(2).

1. As an initial matter, it is not every prisoner who could plausibly assert a violation of a constitutional right of access to the courts. As this Court has explained, "a constitutional requirement to waive court fees in civil cases is the exception, not the general rule." *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 114 (1996); see *United States* v. *Kras*, 409 U.S. 434, 450 (1973) (there is no "unlimited rule that an indigent at all times and in all cases has the right to relief without the payment of fees"). It is generally only in those rare cases where certain "fundamental" or similar interests are at stake, *M.L.B.*, 519 U.S. at 115, that a litigant can plausibly claim violation of a constitutional right of access to the courts. And since many of the recognized fundamental interests involve rights that would be normally asserted in criminal cases or in state court, rather than in a civil case in federal court,[18] it would be an unusual prisoner who could reasonably assert that he was bringing the kind of federal lawsuit that triggers constitutional concerns about court access.

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[18] See, *e.g.*, *M.L.B.*, 519 U.S. at 124 (State may not condition appellate rights on payment of court costs in case terminating parental rights); *Mayer* v. *City of Chi.*, 404 U.S. 189, 198 (1971) (State may not condition a criminal appeal on ability to pay for a transcript); *Boddie* v. *Connecticut*, 401 U.S. 371, 372-374 (1971) (State may not condition access to divorce proceedings on payment of court fees).

2. Even assuming a prisoner has a right to file lawsuits in federal courts without paying filing fees, the per-case interpretation of Section 1915(b) raises no serious constitutional question because it does not prevent a person from doing so. Section 1915(b)(4) provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment" because "the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee is due only "when funds exist"). This provision ensures that "prisoners with meritorious claims will not be shut out from court for lack of sufficient money to pay even the partial fee." 141 Cong. Rec. at 14,573 (statement of Sen. Kyl).

This safety valve has been effective in practice. The courts of appeals have recognized that Section 1915(b)(4) permits a prisoner to proceed with an action or appeal even though he lacks funds to pay the filing fees.[19] District courts routinely rely on the safety-valve provision to permit indigent prisoners to proceed without paying filing fees.[20] Petitioner himself has obtained the benefit of Section 1915(b)(4) in at least five of his cases. See Order at 1-2, *Bruce* v. *Alvarez*, No. 14-cv-03232 (D. Colo. Jan. 25, 2015); Order

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[19] See, *e.g.*, *Sultan* v. *Fenoglio*, 775 F.3d 888, 890-891 (7th Cir. 2015); *Menefee* v. *Werholtz*, 368 Fed. Appx. 879, 884 (10th Cir. 2010) (unpublished); *Wilson* v. *Sargent*, 313 F.3d 1315, 1320-1321 (11th Cir. 2002) (per curiam); *Taylor* v. *Delatoore*, 281 F.3d 844, 850-851 (9th Cir. 2002); *Hatchet* v. *Nettles*, 201 F.3d 651, 652-653 (5th Cir. 2000) (per curiam); *McGore*, 114 F.3d at 605-606; *Leonard* v. *Lacy*, 88 F.3d 181, 184 (2d Cir. 1996).

[20] A search of district court cases that mention 28 U.S.C. 1915(b)(4) in Westlaw and LexisNexis yields hundreds of results.

at 1-2, *Bruce* v. *Osagie*, No. 14-cv-02068 (D. Colo. Sept. 8, 2014); Order at 2, *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. Jan. 25, 2014); Order at 2, *Bruce* v. *Holbrook*, No. 10-cv-03287 (N.D. Ala. Feb. 25, 2011); Order at 1-2, *Bruce* v. *Reese*, No. 09-cv-02378 (N.D. Ala. Jan. 6, 2010).

3. Petitioner acknowledges (Br. 45) that a prisoner would never be prevented from filing a federal-court suit due to lack of funds, but he contends (Br. 45-46) that simply placing a cost on prisoners' ability to file such suits raises serious constitutional questions. He is mistaken. Prisoners are not required to choose between paying for lawsuits and the necessities of life, because prison systems are constitutionally bound to provide inmates with adequate food, clothing, shelter, and medical care. See *Farmer* v. *Brennan*, 511 U.S. 825, 832 (1994). Prisons likewise must provide "paper and pen to draft legal documents" and "stamps to mail them." *Bounds* v. *Smith*, 430 U.S. 817, 824-825 (1977).[21] Adopting the per-case approach under Section 1915(b)(2) therefore would not force a prisoner to

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[21] In the federal system, BOP goes beyond those requirements. See, *e.g.*, U.S. Dep't of Justice, BOP, *Program Statement 5230.05, Grooming* 3 (Nov. 4, 1996), http://www.bop.gov/policy/progstat/5230_005.pdf (explaining that warden must "make available to an inmate those articles necessary for maintaining personal hygiene," including soap, articles for brushing teeth, a comb, toilet paper, female hygiene products, and materials for shaving); U.S. Dep't of Justice, BOP, *Program Statement 5265.14, Correspondence* § 540.21(d)-(f), at 19-20 (Apr. 5, 2011), http://www.bop.gov/policy/progstat/5265_014.pdf (explaining that BOP provides free postage to an inmate who "has neither funds nor sufficient postage," not only for legal mailings but also "to enable the inmate to maintain community ties" and "in verified emergency situations").

choose between paying for a lawsuit and satisfying his basic needs.

Contrary to petitioner's contention (Br. 45-46), this case is nothing like *United States* v. *Jackson*, 390 U.S. 570 (1968). In that case, exercise of the constitutional right to a jury trial risked subjecting the defendant to the death penalty. *Id.* at 581. Here, by contrast, a prisoner who files suit merely has to pay for his use of the federal courts, when he has funds available (and subject to a $10 threshold). The unusual facts of *Jackson* illustrate just how far afield that case is from the PLRA. The payment scheme in the PLRA is not excessive, and it reasonably furthers the legitimate purpose of weeding out frivolous lawsuits by ensuring that prisoners have a sufficient stake in the suits they file so that they carefully assess the merits of their claims before filing suit.

4. Although the PLRA's safety valve fully answers petitioner's constitutional concerns, the statute separately requires monthly payments only so long as the "amount in the [prisoner's trust] account exceeds $10." 28 U.S.C. 1915(b)(2). A prisoner therefore would always be allowed to keep a small portion of his monthly income for discretionary spending. Further, a prisoner with a meritorious claim may owe nothing at the end of the litigation. See Fed. R. Civ. P. 54(d)(1) (allowing an award of costs); see also 28 U.S.C. 1920(1) (explaining that "costs" includes filing fees). For that reason as well, petitioner is wrong to assert that the per-case approach prevents prisoners from pursuing meritorious claims.

Finally, even if a prisoner were unwilling to spend his funds on his federal-court litigation, he could seek relief through the administrative process and in state

courts. Although some States have enacted laws that require payment of filing fees in a manner similar to the PLRA, see Pet. Br. 52 n.16, in others the "limitations on filing [*in forma pauperis*] may not be as strict." *Abdul-Akbar* v. *McKelvie*, 239 F.3d 307, 314-315 (3d Cir.) (en banc), cert. denied, 533 U.S. 953 (2001); see *Lewis* v. *Sullivan*, 279 F.3d 526, 530 (7th Cir. 2002) (recognizing that prisoners who cannot file under the PLRA may have the option of pursuing their claims in state court). Further, prisoners are required to exhaust their administrative remedies under the PLRA, see *Woodford* v. *Ngo*, 548 U.S. 81, 94-103 (2006), and they may obtain the relief sought through that process. See *Ortwein* v. *Schwab*, 410 U.S. 656, 658-660 (1973) (per curiam) (finding that a judicial filing fee did not deprive welfare recipients of their due process rights when they had already been afforded an opportunity for an administrative remedy).

The canon of constitutional avoidance has a role to play only if the governing statute is ambiguous after utilizing all of the tools of statutory construction, and a serious constitutional doubt is presented. See *Department of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125, 134-135 (2002); *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 (2001). Neither is true here.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 1915 provides:

Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and,

when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in

any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for,

or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

2. 28 U.S.C. 1915A provides:

Screening

(a) Screening.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.—As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

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IN THE
Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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ARGUMENT

This case allows the Court to resolve a deep circuit split over the correct interpretation of 28 U.S.C. § 1915(b)(2), which governs the manner in which indigent prisoner litigants make 20%-of-monthly-income installment payments toward filing fees they owe to federal courts. The courts of appeals have identified two possible approaches. First, the per-prisoner (or sequential) approach requires prisoners to pay off multiple filing fees (and costs) sequentially, beginning the 20% monthly payments on a second, for instance, only after full satisfaction of the first. Second, the per-case (or simultaneous) approach requires prisoners to pay off multiple fees (and costs) concurrently, such that a prisoner with five outstanding filing fees (or costs) would have 100% (*i.e.*, 5 x 20%) of his income garnished each month. Making an already complicated case more complicated, Respondents in their brief even identify a sub-variant of the per-case approach (*see infra* p. 12). In the end, as shown in our opening brief and reinforced below, the text, the statutory structure, context, and purposes, the canon of constitutional avoidance, and administrative feasibility considerations all compel the per-prisoner approach.

I. THE PLRA'S TEXT REQUIRES THE PER-PRISONER APPROACH

A. The Combination of the Singular "Clerk of the Court" and the Plural "Filing Fees" Shows Congress Adopted the Per-Prisoner Approach in Subsection (b)(2)

Whether the PLRA's text adopts a per-prisoner or per-case approach turns on the interpretation of the

plural "filing fees" in subsection (b)(2), as accompanied by the singular "clerk of the court" in that same subsection: "The agency having custody of the prisoner shall forward payments from the prisoner's account to *the clerk of the court* each time the amount in the account exceeds $10 until the *filing fees* are paid." 28 U.S.C. § 1915(b)(2) (emphasis added).

Petitioner Antoine Bruce views the quoted sentence in (b)(2) as addressing the common situation in which a prisoner has filed more than one civil action or appeal and thus owes multiple "filing fees" (plural) – rather than a single filing fee – and as requiring that one 20% payment be made to a single court in that situation (because only one "clerk of the court," singular, is being paid at a time). Pet. Br. 17-19. In contrast, Respondents interpret (b)(2) as addressing the payment of multiple fees associated with a single civil action or appeal. *See, e.g.*, Resp. Br. 22 ("the reference to 'fees' in subsection (b)(2) refers to the multiple fees due in a single case").

Respondents' argument that (b)(2)'s "filing fees" refers to the "multiple fees [that] can be assessed in a single case" is belied by the facts. Resp. Br. 21. With respect to district court proceedings, Respondents identify only a $50 administrative fee, in addition to the $350 statutory filing fee. *Id.* But a party proceeding *in forma pauperis* under § 1915 is not subject to the $50 administrative fee. *See* 28 U.S.C. § 1914; D. Ct. Misc. Fee Schedule ¶ 14, http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule (Aug. 20, 2014). As a result, contrary to Respondents' assertion that there are "multiple fees" in a single case (Resp. Br. 22), there is a

single filing fee for civil actions initiated by *in forma pauperis* litigants.

With respect to appeals, Respondents identify a $5.00 "statutory fee" that the appellant must pay to the district court under 28 U.S.C. § 1917 in addition to the $500 "docketing fee" that the district court collects on behalf of the court of appeals under 28 U.S.C. § 1914. Resp. Br. 21-22. However, these court fees are components of a single $505 filing fee, not two separate filing fees. When the Administrative Office of the U.S. Courts' Miscellaneous Fee Schedule was amended in 2014, the Administrative Office of U.S. Courts issued a notice stating that "a statutory fee of $5 will be charged in addition to a $500 docketing fee, *for a total filing fee of $505*." *See* http://www.uscourts.gov/news/2014/11/19/new-court-fees-take-effect-dec-1 (emphasis added). The courts of appeals therefore direct appellants to pay a single $505 filing fee to the district court when they docket the notice of appeal.[1] This approach of combining all start-up fees into a single "filing fee" is consistent with the PLRA's terms, as Congress collectively, and definitionally, referred to "the amount of

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[1] *E.g.*, Fee Schedule for 2d Cir. (Dec. 1, 2013), http://www.ca2.uscourts.gov/clerk/case_filing/fee_schedule.html (listing $505 fee for "Notice of Appeal"); 4th Cir. Appellate Procedure Guide at 1 (Dec. 1, 2014), http://www.ca4.uscourts.gov/AppellateProcedureGuide/Initial_Require-ments/APG-appealfeesandindigentstatus.html (listing a "$505 fee" for an appeal); *see also Lee v. Superintendent Houtzdale SCI*, 798 F.3d 159, 163 (3d Cir. 2015) ("$505 filing fee" for filing notice of appeal); *United States v. Chisholm*, No. 15-4051, 2015 U.S. App. LEXIS 13278, at *5 (10th Cir. July 30, 2015) (directing the appellant "to immediately pay the entire $505 appellate filing fee").

fees permitted by statute" for a single civil action or appeal as the "filing fee." *See* 28 U.S.C. § 1915(b)(3).

In addition, Bruce's interpretation of "filing fees" in § 1915(b)(2) as referring to multiple actions is consistent with the surrounding statutory text, which makes clear that Congress understood there is a single "filing fee" for each civil action or appeal. Section 1915(b)(1) states: "if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a *filing fee*." 28 U.S.C. § 1915(b)(1)(emphasis added). And § 1915(b)(3), in full, states: "In no event shall the *filing fee* collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." *Id.* § 1915(b)(3) (emphasis added). Consequently, the two provisions that immediately surround § 1915(b)(2) confirm that Congress understood there to be a single filing fee for each civil action or appeal for a prisoner proceeding *in forma pauperis*. Because "filing fees," then, must refer to more than one civil action or appeal, (b)(2)'s directive that "[t]he agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court . . . until the filing fees are paid" must contemplate a per-prisoner approach, wherein each filing fee owed to each clerk of the court is paid off one at a time. *Id.* § 1915(b)(2).

Because the contrast between the use of "filing fee" in (b)(3) (in referring a single action or appeal) and the use of plural "filing fees" in (b)(2) undermines a per-case approach, Respondents adopt the farfetched notion that "filing fee" in (b)(3) must refer to the "initial

partial filing fee." Resp. Br. 23. That position does not hold up because elsewhere in the statute, Congress consistently refers to the "initial partial filing fee" in those very terms and uses "filing fee" to describe the total amounts owed at the initiation of a civil action or appeal. There is no reason that Congress, having referred to the "initial partial filing fee" as just that in (b)(1), (b)(2), and (b)(4), would suddenly refer to it as the "filing fee" in (b)(3), especially when elsewhere in the statute – specifically (b)(1) – Congress used "filing fee" to mean something else.

Likewise, § 1915 includes a parallel provision on costs awards that cannot possibly be interpreted as Respondents read subsection (b)(3), even though the two sections are worded almost identically. Section 1915(f)(2)(C) provides: "In no event shall the costs collected exceed the amount of the costs ordered by the court." By Respondents' logic, this prohibition would refer to an initial partial costs award, which does not exist in the statute. The obvious purpose of subsection (f)(2)(C) is to ensure that a court does not add a premium – by, for example, charging interest – onto the prisoner's delayed payment of all costs awarded in the case. In the same vein (and contrary to Respondents' creative purpose for (b)(3), *see* Resp. Br. 23), subsection (b)(3) ensures that a court will not add a premium onto the delayed payment of "the filing fee," referring to the full filing fee required for initiation of an action or appeal. *See Hagan v. Rogers*, 570 F.3d 146, 155 (3d Cir. 2009) ("common sense indicates that § 1915(b)(3) . ensures that an IFP prisoner's fees, *when paid by installment*, will not exceed the standard individual filing fee paid in full") (emphasis added).

In sum, under Bruce's straightforward textual interpretation, "filing fee" is the amount charged for the initiation of a civil action or appeal, and "filing fees" are due when a prisoner has initiated more than one civil action or appeal. Under Respondents' interpretation, the meaning of "filing fee" is ever-changing. The Court should adopt Bruce's simple, textual approach, over Respondents' strained presentation.

B. Respondents' Rigid Tying of Subsection (b)(2) to Subsection (b)(1) Cannot Sustain the Per-Case Approach

In addition to contesting Bruce's textual argument, Respondents posit their own textual argument: that subsection (b)(2) is "linked" to (b)(1) in the text and therefore should be treated on the per-case basis on which all agree (b)(1) applies. Resp. Br. 16. Respondents' coupling of the two subsections for interpretive purposes is not persuasive, at a minimum because, as we noted in our opening brief, subsection (b)(2) uses entirely different nomenclature and structures: "clerk of the court" instead of "court"; a different financial measuring point (monthly income vs. account balance); (b)(2) alone establishes a $10 minimum threshold; and, most importantly, (b)(2) uses "filing fees" (plural) and (b)(1) uses only "filing fee." *See* Pet. Br. 31-32. Respondents note that there are specific reasons for these differences (*see* Resp. Br. 19-20), but that is exactly the point. Congress was viewing matters from the perspective of the task at hand in each provision, not simply adding more sentences to (b)(1) by creating (b)(2).

Further, Respondents' assertion that Congress viewed subsections (b)(1) and (b)(2) as inextricably tied

is disproven by the costs provisions. There, Congress said that costs should be collected "in the same manner" as filing fees under (b)(2). 28 U.S.C. § 1915(f)(2)(B). As there is no initial partial payment corollary to (b)(1) in the costs provision, (b)(2) demonstrably can – indeed, must – be read in isolation from (b)(1). Otherwise, (b)(1) would come along with (b)(2) to the costs provisions, thereby prompting initial partial costs payments.

Respondents assert that Bruce's reading of the statute requires a shift "in the middle of the [first] sentence" of (b)(2) from a single-case perspective to a multiple-filing viewpoint. Resp. Br. 18. Not true. Bruce reads the first sentence just as it is written: "After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20% of the preceding month's income credited to the prisoner's account." That is, monthly payments kick in after payment of the initial partial filing fee, but the question remains whether it is concurrent with any other filing fee or costs award, or sequential. In either instance, monthly payments and an initial partial filing fee are to be paid. The battle is over the meaning of the second sentence, where Congress switched to referencing "filing fees" (plural).

II. THE STATUTORY STRUCTURE AND CONTEXT CONFIRM THAT CONGRESS INTENDED THE PER-PRISONER APPROACH

A. In a "context" argument they make, Respondents devote a considerable portion of their brief to highlighting every word of the statute that refers to a single civil action or appeal, including references to "a" and "the." Resp. Br. 24-27. But that lengthy exercise

begs the question of how multiple filing fees are to be paid. Bruce does not contest that the filing of a single case or a single appeal triggers the obligation to make monthly installment payments. The issue is *when* such payments are to be made if the prisoner owes filing fees for more than one civil action or appeal.

In any event, Respondents are incorrect that the statute speaks solely from "the perspective of a single action or appeal, not from the perspective of multiple actions or appeals." Resp. Br. 24. On this front, there is the three-strikes rule in § 1915(g) – a lynchpin of the statute. Indisputably, one of the central purposes of the statute, reflected certainly in the three-strikes provision, was to address the practice of prisoners engaging in the filing of multiple civil actions and appeals. Consistent with the statute's focus on the problem of multiple filings – including the three-strikes provision – (b)(2)'s reference to "filing fees" should be seen as referring to more than one case.

Contrary to Respondents' contention, the Court's decision in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), does not decree that the entirety of § 1915 "is written from the perspective of a single action or appeal." Resp. Br. 28. What *Coleman* indicates is that § 1915 should be read commensurate with "what the statute *literally* says" (*Coleman*, 135 S. Ct. at 1763 (emphasis added)), and the Court then focused on the singular usage of the terms "an action or appeal" and "was dismissed" in the three-strikes provision when determining whether each district court dismissal (even if still on appeal) counts as a strike. Applying *Coleman*'s teaching, the statute *literally* uses the plural "filing fees" and the singular "clerk of the court"

when announcing the procedures for installment payments in the second sentence in subsection (b)(2). The literal interpretation of those terms is that a single court gets an installment payment when more than one filing fee is owed.

B. Respondents also contest Bruce's arguments that the statutory context supports a per-prisoner approach. None of their responses has merit.

1. Respondents have no real response to Bruce's showing that the supposed deterrence objective associated with the per-case approach would have caused Congress to state explicitly the adoption of the per-case approach on the face of the statute. It is no answer to say that this Court regularly is called on to resolve "ambiguity" in statutes, even those that might have a deterrence purpose. Resp. Br. 36 n.10. In this instance, Respondents take the position that the per-case approach is necessary, because Congress sought – without any qualification anywhere in the PLRA – to deter frivolous lawsuits. If so, Congress would have put in the strongest terms a warning to prisoners that they will lose all of their income if they repeatedly file dismissable lawsuits. Plainly, subsection (b)(2) contains no overt warning of the per-case approach.

2. Respondents likewise have no solid answer for Bruce's contention that the per-case approach suffers from Congress having failed to address what to do with respect to the sixth encumbrance (*i.e.*, filing fee or costs award) and up, when 100% of monthly income is by then gone. Cynically, they say that prisoners likely would have three strikes by the time the prisoners would otherwise have incurred five encumbrances. *See* Resp. Br. 29.

But it is no anomaly that a prisoner would accrue five or more encumbrances. A single case, as the Second Circuit has recognized, can produce numerous filing fees and costs awards. *See Whitfield v. Scully*, 241 F.3d 264, 276 (2d Cir. 2001). For instance, the case leading to this petition is subject potentially to seven encumbrances. The litigation was brought in the D.C. district court (where one filing fee accrued and a costs award was possible); that led to the mandamus petition in the D.C. Circuit (where another filing fee accrued and another costs award could have come); now the case has been transferred to Alabama federal court (no new filing fee for a transfer, but potentially a costs award at the end of the case); and there could be an appeal to the Eleventh Circuit at the end (another filing fee, and potentially another costs award). That would make for seven total filing fees and costs; moreover, several more could have accrued if, on mandamus, the D.C. Circuit had decided to venue some claims in D.C. and some in Alabama (leading to a dizzying number of additional potential filing fees and costs for tandem cases).

3. Respondents reply "never mind" to Bruce's contextual argument that Congress's provision for costs awards in monthly installments – and the complications it causes (*see* Pet. Br. 25-26) – undermine the per-case approach. They say "never mind" because the federal government in practice rarely seeks costs against prisoners (though they admit states do, *see* Resp. Br. 31 n.8), and costs awards supposedly are small. Irrespective of the federal government's practice, nothing in § 1915(f) suggests Congress anticipated anything other than the regular awarding of costs, having made detailed provision for their collection. As

to Respondents' statement that costs awards, and particularly large ones, are "rare" (*id.* at 31), a survey of federal cases involving indigent prisoners reveals awards of $3,857.35,[2] $3,214.50,[3] $3,018.35,[4] $1,934.47,[5] $1,794.25,[6] and $1,637.76.[7]

4. In response to Bruce's argument that the per-case approach would undermine the purpose of the $10-rule, *see* Pet. Br. 27-31, Respondents offer several counterarguments, none of which is compelling. Respondents initially misconstrue Bruce's argument as claiming that under the per-prisoner approach, prisoners will always, under all circumstances, be left with at least $6 in their accounts. Resp. Br. 33. Of course, as Respondents remind us, prisoners may have other payment obligations beyond the installment payments mandated by § 1915(b)(2). But that is beside the point. Bruce's argument was that the $10-rule was meant to ensure that the monthly installment payments *by themselves* would not drain prisoners' accounts and leave them with no money for discretionary spending. The $10-rule is coupled with the 20%-installment-payment provision for a reason. Together, those provisions require prisons to wait until a prisoner's account grows beyond $10, and only then deduct a portion of

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[2] *Singleton v. Smith*, 241 F.3d 534, 537, 544 (6th Cir. 2001).

[3] *McGill v. Faulkner*, 18 F.3d 456, 458 (7th Cir. 1994).

[4] *Draper v. Rosario*, No. 2:10-cv-0032, 2014 WL 3689718, at *3 (E.D. Cal. July 24, 2014).

[5] *Fernandez v. Cal. Dep't of Corr.*, No. 2:11-cv-1125, 2015 WL 1530499, at *3 (E.D. Cal. Apr. 2, 2015).

[6] *Adkins v. Wolever*, No. 1:03-CV-797, 2007 WL 1521194, at *2 (W.D. Mich. May 21, 2007).

[7] *Janoe v. Stone*, No. 06-CV-1511, 2012 WL 70424, at *1 (S.D. Cal. Jan. 9, 2012).

the preceding month's income (20% for a filing fee or 40% for both a filing fee and a costs award), such that, after the deduction, some non-trivial amount will always be left in the account. The per-case approach, by draining all or nearly all of some prisoners' accounts, would undercut the $10-rule's purpose.

Realizing this, Respondents offer a new spin on the per-case approach – a sort of "modified" per-case approach that they say the Bureau of Prisons ("BOP") applies. *See* Resp. Br. 32. Whereas under what might be called the "classic" per-case approach, prison officials take $100% of monthly income to satisfy five or more encumbrances whenever the balance in the account is more than $10, Respondents' modified per-case approach sometimes stops short of taking all of a prisoner's monthly income. Specifically, Respondents have posited a reading of the $10-rule whereby prison officials will stop simultaneous collection at the encumbrance just prior to the one that would lead the account to go below $10. To Respondents' credit, at least the modified per-case approach has the benefit of leaving $10 in the account and therefore being consistent with the notion that Congress, with the $10-rule, evinced the intent to leave prisoners always with some minimal amount after application of subsection (b)(2).

But the difficulties with the modified per-case approach are legion. The glaring problem is that the methodology has no support in the case law, as the courts of appeals have long been in agreement (thus, making it the "classic" per-case approach) that in any month a prisoner's account balance exceeds $10, up to 100% of the preceding month's income will be with-

drawn. *See Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997) (adopting per-case approach and observing that "[f]ive suits or appeals mean that the prisoner's entire monthly income must be turned over to the court until the fees have been paid"); *Siluk v. Merwin*, 783 F.3d 421, 426 (3d Cir. 2015) (adopting per-prisoner approach and noting that, under the per-case approach, "unlike for the sequential rule, . . . if an inmate had $10 and owed money in five cases the clerk would deduct $2 for each case thus emptying the inmate's account"); *Torres v. O'Quinn*, 612 F.3d 237, 246 (4th Cir. 2010) (same); *see also* Pet. Br. 28 (collecting cases).[8]

Additionally, the modified per-case approach leads to results flatly contradicted by the statute, as when, for example, $11 is in the account, all from income earned the previous month; in that situation, no installment payments would occur, since even one 20% payment ($2.20) would send the balance under $10. Yet, § 1915(b)(2) states, unequivocally, that prison officials "shall forward payments each time the

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[8] To counter the armada of case law confirming Bruce's reading of the $10-rule, Respondents cite a lone decision that they say indicates "*[s]everal* courts of appeals have proceeded on [Respondents'] assumption." Resp. Br. 32 (citing *Skinner v. Govorchin*, 463 F.3d 518, 523-24 (6th Cir. 2006)) (emphasis added). *Skinner*, however, is one case (not several) and made only a passing comment that $10 should "remain[] in the account each month." *Skinner*, 463 F.3d at 524. In reality, the Sixth Circuit – consistent with the other circuits (and in a case Respondents even elsewhere cite, *see* Resp. Br. 38, 47) – adopts the view that "[n]o violation of the statute occurs if the application of the twenty-percent rule reduces the balance of the account below ten dollars." *McGore v. Wrigglesworth*, 114 F.3d 601, 607 (6th Cir. 1997).

amount in the account exceeds $10." And still another reason to reject Respondents' construction of the $10-rule is that state prison officials (and the vast majority of prisoners are in state prisons, not federal ones) appear not to follow it. *See Richmond v. Stigile*, 22 F. Supp. 2d 476, 477, 479 (D. Md. 1998); *Losee v. Maschner*, 113 F Supp. 2d 1343, 1345-47, 1355 (S.D. Iowa 1998).

Two wrongs don't make a right, and the Court should not adopt an ill-advised construction of the $10-rule in order to save the per-case approach from its inconsistency with Congress's intention that prisoners – even after application of subsection (b)(2) – retain a small measure of income. The Court should side with the per-prisoner approach, which unqualifiedly pays fidelity to the intent reflected in the $10-rule.

III. THE PER-PRISONER APPROACH BEST ACCOMPLISHES THE PLRA'S FULL OBJECTIVES

In showing that the per-prisoner approach best satisfies the PLRA's purposes, Bruce emphasized in his opening brief that Congress enacted the PLRA to effectuate two goals: to filter out "the bad claims" filed by prisoners *and* to "facilitate consideration of the good." *Jones v. Bock*, 549 U.S. 199, 204 (2007). Respondents never say how the per-case approach is compatible with ensuring prisoners continue to have motivation to file legitimate cases.

Instead, Respondents' focus is solely on deterrence, seeking first to show that adoption of the per-prisoner approach would result in a system too soft on prisoners. To this end, they insist that only the per-case approach requires a "financial commitment for each

action or appeal a prisoner files." Resp. Br. 33. Respondents are incorrect. Under the per-prisoner approach, there remain numerous financial disincentives to deter the filing of a frivolous lawsuit, including: (1) the initial partial filing fee, with no minimum threshold that a prisoner's account must surpass before this debt is collected[9]; (2) the 20% monthly installment for all outstanding filing fees, with ever-increasing months of installments each time a new lawsuit is filed; and (3) the 20% monthly installment payments for costs that might be awarded. Plus, these monetary disincentives are supplemented under the per-prisoner approach (as well as under the per-case approach) by non-financial checks that help thwart a frivolous filing. *See, e.g.*, 28 U.S.C. § 1915A (judicial screening for frivolousness); *id.* § 1915(g) (three-strikes rule); 42 U.S.C. § 1997e(a) (administrative exhaustion requirement).

Still focusing on deterrence, Respondents then contend that the PLRA is somehow in dire need of additional tools to accomplish its deterrence objective. To the contrary, the PLRA has been doing its job. Between 1995 and 2006, the rate of filings by "[p]rison and jail inmates" dropped by 60%, from "twenty-six federal cases per thousand inmates," to "less than eleven cases per thousand inmates." Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in Amer-*

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[9] While Respondents acknowledge that § 1915(b)(1)'s initial partial filing fee is, in fact, an economic disincentive, they brush it off as a "minimal" "one-time cost." Resp. Br. 37 n.11. Yet, Congress has recognized, in the *in forma pauperis* context particularly, that "the less a man has[,] the more important it is to him." H.R. Rep. No. 52-1079, at 2 (1892).

ica's Jails & Prisons: The Case for Amending the Prison Litigation Reform Act, 11 U. Pa. J. Const. L. 139, 141-42 (2008).

Respondents assert that "recent data" purportedly "confirms that frivolous prisoner lawsuits remain a serious problem," in that "[p]risoners have filed at least 25,000 civil rights and prison conditions lawsuits every year for the past five years." Resp. Br. 39 & n.13. However, Respondents fail to note that in relative terms the rate of filings has actually remained stable at a "per capita rate of approximately 10 lawsuits per 1,000 prisoners." Br. of *Amici Curiae* Thirty-Three Professors in Support of Petitioner in *Coleman v. Tollefson*, No. 13-1333, at 7 (Dec. 8, 2014); *see also id.* at 11-13. There are more prisoner cases now because there are more prisoners, not because the PLRA is failing sufficiently to deter individual prisoners from frivolous filings.

Finally, Respondents undermine their own deterrence cause, with their modified per-case approach. Again, under the modified per-case approach, prison officials do not collect an installment payment if it would result in less than $10 remaining in the prisoner's account after the deduction. Ironically, the per-prisoner approach actually provides a stronger deterrent in situations where a prisoner has slightly more than $10 in his account.[10] Take the example earlier

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[10] There may be plenty of such prisoners, given that some states pay working prisoners just pennies per hour, and some prisoners for whom jobs are unavailable receive "idle pay" that comes to about $10 per month. *See* Pet. Br. 37 n.9.

described, where a prisoner has $11 in his account, with that $11 all from income earned the prior month, and then assume five encumbrances (a mix of filing fees and costs). The result under the per-prisoner approach would be deductions of $4.40 (2 x $2.20, with one for the first filing fee and one for the first costs award), leaving $6.60 in the account. The modified per-case approach would take nothing because a deduction for just the first encumbrance would send the account below $10.

These vagaries illustrate further that the best course for satisfaction of the PLRA's twin objectives is for the Court to adopt the per-prisoner approach. It accomplishes – and reliably so – some deterrence among a slew of other mechanisms that deter, and it does not squelch commencement of the meritorious cases Congress wanted to ensure would still be brought.

IV. THE CONSTITUTIONAL-AVOIDANCE CANON SUPPORTS THE PER-PRISONER APPROACH

Despite Respondents' arguments to the contrary, the doctrine of constitutional avoidance provides an additional, compelling reason for this Court to adopt the per-prisoner approach.

Respondents begin by claiming that only in "rare cases" do prisoners present the sorts of fundamental-rights claims that would guarantee them a constitutional right of access to courts. Resp. Br. 46. This is demonstrably false. Each year, prisoners file thou-

sands of civil rights suits,[11] which by definition seek vindication of important constitutional rights. *See Bounds v. Smith*, 430 U.S. 817, 827 (1977) ("civil rights actions are of fundamental importance . in our constitutional scheme because they directly protect our most valued rights") (internal quotation marks and citation omitted). Such lawsuits include (like the litigation here) Eighth Amendment challenges to inhumane prison conditions.

Respondents emphasize that the collection of filing fees under the per-case approach will not completely block prisoners' access to courts. But as they later acknowledge (Resp. Br. 48), Bruce never said it would. Rather, he argued that the per-case approach will impermissibly chill indigent prisoners' constitutional right of court access by threatening them with the loss of up to 100% of their income as the price of litigating. Pet. Br. 45-46. Respondents needlessly work to distinguish *United v. Jackson*, 390 U.S. 570 (1968), a case Bruce cited only for its articulation of a basic principle of constitutional law that is relevant here and to which Respondents do not object. *Jackson* explains that if a statute imposes back-end costs on the exercise of a constitutional right which unnecessarily chill the exercise of that right, then the statute is unconstitutional. And this is so even if, as under the per-case approach, the statute does not outright bar the exercise of the right in question.

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[11] *See Table C-2A, U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 2009 Through 2014*, at 3 (2014 Table C-2A), http://www.uscourts.gov/statistics/table/c-2a/judicial-business/2014/09/30.

For that same principle, Bruce also cited (and Respondents did not address) *Fuller v. Oregon*, 417 U.S. 40 (1974). *Fuller* involved a statute under which indigent defendants could be required to pay back the costs of state-appointed legal representation. *Id.* at 43. The Court found that the statute did not impermissibly chill the exercise of defendants' right to counsel because it was "carefully designed" to avoid imposing repayment obligations that would cause defendants significant hardship. *Id.* at 53. Lower courts have interpreted *Fuller* to mean that more onerous repayment obligations *do* chill the exercise of the right to counsel and are therefore unconstitutional.[12] Here, Congress "carefully designed" § 1915(b)(2) to ensure that prisons would take no more than 20% of prisoners' incomes each month, thereby imposing on prisoners a significant, but not overly harsh, repayment obligation.

In then addressing Bruce's "chill" argument, Respondents attack another strawman by noting that prisons are obligated to provide inmates with the basic necessities of life. Again, Bruce never argued that without any income, prisoners would be left to freeze in the winter or go without life-saving medical care. Instead, he explained that if prisoners are deprived of all their income, they could lose the ability to call or write to loved ones, buy reading materials, or acquire the few other simple amenities they are permitted in order to make prison life more bearable. Pet. Br. 47. The question here is not whether prisoners have a

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[12] *See Minn. v. Tennin*, 674 N.W.2d 403, 410 (Minn. 2004); *Hanson v. Passer*, 13 F.3d 275, 279 (8th Cir. 1994); *Alexander v. Johnson*, 742 F.2d 117, 123-24 (4th Cir. 1984); *United States v. Bracewell*, 569 F.2d 1194, 1199 (2d Cir. 1978).

right to those amenities, but whether the threat of having them taken away as the cost of exercising their right of court access would present constitutional concerns.

In order to lessen constitutional doubts about the per-case approach, Respondents again fall back on their modified per-prisoner approach, under which inmates will always be left with at least $10 in their accounts. Resp. Br. 49. While such an approach would leave prisoners with more money for simple amenities, Respondents' interpretation of the $10-rule is, as we have shown, illegitimate. *See supra* pp. 12-14.

Respondents' last ditch argument is that prisoners could simply seek relief through administrative proceedings or in state courts. Resp. Br. 49-50. The availability of administrative channels, without the potential for judicial review, does not answer concerns about the constitutional "right of access to *courts*." *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (emphasis added). And as for the availability of state courts, Bruce has made clear that many states have enacted statutes virtually identical to the federal PLRA, *see* Pet. Br. 52 n.16, and Respondents' only answer to this is that *some* states may not be as strict. Resp. Br. 50.

V. THE PER-PRISONER APPROACH IS ADMINISTRATIVELY MORE FEASIBLE

Respondents insist that the per-case approach is "straightforward" and that the per-prisoner approach "raises questions about how to sequence payments and which court orders should take priority." *Id.* at 42, 43. Neither claim is true. It is the per-prisoner approach that is straightforward, while the per-case approach is

unwieldy and therefore unlikely to have been the one Congress envisioned.

Respondents maintain that prison officials face the burden of "decid[ing] which [payment] orders to satisfy and in what order." *Id.* at 43. This argument manufactures confusion where there is none. The only logical way to sequence multiple payment obligations is chronologically. The first fee is paid off first, then the second, and so on. That is the approach taken by every court to have adopted the per-prisoner interpretation, and Respondents do not even suggest an alternative manner of sequencing, likely because no logical alternative exists, and because their own approach requires chronological sequencing as well (after the fifth encumbrance).

As Respondents admit, if a prisoner in a per-case regime is already subject to five encumbrances (and is therefore forfeiting 100% of his income, at least under the classic per-case approach), any additional payment obligations that he incurs will be "deferred," presumably until earlier-in-time obligations are satisfied. *Id.* at 30. Realizing this, Respondents argue that, although their approach also requires sequencing, it will occur less often, because only litigious prisoners will face more than five encumbrances. *Id.* at 44. We have, however, already shown that obtaining five encumbrances is hardly an oddity. *See supra* p. 10.

Under Respondents' novel approach to the $10-provision – *i.e.*, the modified per-case approach – prisons must engage in even more sequencing while facing other administrative hassles not presented by Bruce's approach. In addition to requiring prisons to forward up to five payments per month per prisoner, Respond-

ents' regime compels prisons to reevaluate each prisoner's account balance after each deduction, stopping deductions whenever the next withdrawal would bring the balance below $10. *See* Resp. Br. 32. When the prison officials must stop mid-process, where do they pick up the next month – with the first one that did not make the grade the prior month, or back with the first one in time (giving that encumbrance a payment two months in a row)?

Respondents scarcely address the point that the per-case approach, by sometimes taking all of prisoners' earnings, leaves the states unable to accomplish their own objectives through actual or threatened deductions from prisoners' wages. *See* Pet. Br. 51-53. State facilities cannot incentivize inmates to be prudent in seeking medical care by requiring co-pays, or incentivize good behavior through the threat of disciplinary fees, or even incentivize prison labor (which likely serves important rehabilitative goals) if many of their prisoners must forfeit all or nearly all of their earnings in order to satisfy federal PLRA obligations. To paraphrase the song, something from nothing leaves nothing, and that is the reality the states face under the per-case approach.

CONCLUSION

The decision of the D.C. Circuit refusing to stay collection of Bruce's portion of the filing fee owed for the mandamus petition should be reversed.

Respectfully submitted,

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No. 14-844

In the Supreme Court of the United States

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND 19 OTHER STATES IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66, when an *in forma pauperis* prisoner files a civil lawsuit or an appeal in federal court and cannot pay the full filing fees, he generally must make an initial partial payment, 28 U.S.C. § 1915(b)(1), and then must pay the rest of the filing fees by "mak[ing] monthly payments of 20 percent of the preceding month's income credited to [his] account" (so long as his account contains more than $10), 28 U.S.C. § 1915(b)(2). The question presented is:

Whether, when an *in forma pauperis* prisoner has filed more than one federal lawsuit or appeal, his monthly payment is 20 percent of his monthly income regardless of how many cases he has filed or instead is 20 percent of his monthly income for each case that he has filed.

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INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

The vast majority of prisoners incarcerated in the United States reside in state prisons: out of the 1,561,525 total prisoners in the United States, 1,350,958 reside in state prison. Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014*, Table 2 (Sept. 2015). The *Amici* States, and the Attorneys General who serve as their chief law-enforcement officers, thus have a direct and concrete interest in the proper interpretation and application of the Prison Litigation Reform Act. That interest includes enforcing the statute's provisions regarding costs so that (as a majority of circuits have held) a prisoner bears a marginal cost for *each* action or appeal he files, rather than being allowed "a free ride after they file their first piece of litigation. *Torres* v. *O'Quinn*, 612 F.3d 237, 256 (4th Cir. 2010) (Niemeyer, J., dissenting).

Section 1915(b) imposes costs and requires payment for *each* litigation stage a prisoner chooses to enter. Subsection (b)(1) requires that initial partial payments be made both when an action is filed and when an appeal is filed, and this shows that Congress intended to require prisoners to pay costs on multiple filings at the same time. Indeed, applying the text to the paradigm prisoner case (which consists of a filing, a dismissal of the action, and then an appeal) requires *simultaneous* payments by a single prisoner: an *initial* payment on appeal at the same time as a *monthly* payment on the district-court action. This demonstrates that Congress's intent was not to adopt a per-prisoner collection approach, but rather a per-litigation-stage approach.

None of the petitioner's arguments overcome this point. While he relies heavily on the argument that Congress intended a single court to collect multiple fees, a neighboring statutory provision addressing fees shows that Congress expected multiple fees to be owed to a single court simply from filing a complaint. § 1914(a) (imposing a $350 filing fee); § 1914(b) (allowing for additional fees, via a fee schedule).

Nor is there any constitutional problem to be avoided by applying a per-litigation-stage approach, because there is a safety valve: § 1915(b)(4) allows even a prisoner who has 100% of his income dedicated to prior filings to file a new action or appeal anyway, without paying an initial partial fee. And in any event, *in forma pauperis* status is generally a statutory privilege, not a constitutional right; because Congress created the privileged status in the first place, it can impose sensible limits on that privilege so that it does not subsidize an unlimited number of filings.

In the end, not only do the text and context of § 1915 demonstrate that costs should be collected simultaneously for each litigation stage, that approach also furthers Congress's purpose of deterring excessive litigation by requiring prisoners to bear some cost each time they file an action or an appeal. In contrast, adopting a per-prisoner approach would greatly reduce the statute's deterrent effect after the first filing. And the per-litigation-stage approach is readily manageable by the States.

ARGUMENT

I. Both text and context show that § 1915(b) imposes filing fees at specific litigation stages and requires their payment on the same basis.

Outside the prison context, if a litigant is granted leave to file *in forma pauperis*, then his filing fees are forgiven. BLACK'S LAW DICTIONARY 794 (8th ed. 2004) (defining "in forma pauperis" as "[i]n the manner of an indigent who is permitted to disregard filing fees and court costs"). This forgiveness of fees did not exist in the federal courts for the first century of our Nation's history; instead, the First Congress imposed filing fees on all plaintiffs. *Lewis* v. *Sullivan*, 279 F.3d 526, 528 (7th Cir. 2002). Congress did not create the statutory privilege of *in forma pauperis* status until 1892. *Id.*

In the Prison Litigation Reform Act, Congress chose not to extend the privilege of fee forgiveness to prisoners. Instead, for prisoners pauper status means that the fees are paid in installments, not forgiven: "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1).

This different approach stems from Congress's recognition that prisoners who have no income are not indigent in the same way that an ordinary American might be. "Unlike other prospective litigants who seek poor person status, prisoners have all the necessities of life supplied, including the materials required to bring their lawsuits." 141 Cong. Rec. S7526 (May 25, 1995) (statement of Sen. Kyle).

With the necessities of life supplied them, prisoners have different incentives from the general public. "Congress recognized that 'a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.' " *Denton* v. *Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke* v. *Williams*, 490 U.S. 319, 324 (1989)). The PLRA thus was designed to require a prisoner to bear some costs for litigation activity to give prisoners an incentive to file only meritorious claims: "The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims *and multiple filings*." 141 Cong. Rec. S7526 (May 25, 1995) (emphasis added).

A. Section 1915(b) imposes payments on a per-litigation-stage basis.

Section 1915(b) requires a prisoner to pay the full filing fee for each stage of litigation he chooses to pursue: "the prisoner shall be required to pay the full amount of a filing fee" "if a prisoner [1] brings a civil action or [2] files an appeal in forma pauperis." § 1915(b)(1). This means a prisoner who brings an action and then files an appeal in the same case must pay two fees: the full district-court filing fee *and* the full appellate-court filing fee. This is consistent with the fact that the statute expressly and consistently focuses not on a "case" as a whole, but on the litigation stages at which filing fees are incurred: "The *in forma pauperis* statute repeatedly treats the trial and appellate stages of litigation as distinct." *Coleman* v. *Tollefson*, 135 S. Ct. 1759, 1763 (2015) (citing §1915(a)(2),(a)(3), (b)(1), (e)(2), & (g)). There is thus no per-prisoner approach for imposing the full filing fee.

Not only must a prisoner eventually pay the full filing fee incurred for each litigation stage, he also must pay the initial partial filing fee up front, at the time he enters a particular stage of litigation. The statute provides that a prisoner who qualifies for pauper status must pay "an initial partial filing fee of 20 percent" of the average monthly deposits or monthly balance (whichever is greater) whether he is filing a "complaint" or a "notice of appeal." § 1915(b)(1). This initial partial *filing* fee is due, as its name suggests, when "the complaint or notice of appeal" is filed. § 1915(b)(1); see also § 1914(a); accord Pet. Br. 3 ("A first, partial payment comes at the time of the commencement of the case or docketing of an appeal."). In short, the initial partial payment is triggered, as one would expect, by the commencement of a new litigation stage—by the filing of a complaint *or* by the filing of an appeal. Thus, the initial partial fee, like the obligation to pay the full fee, also applies on a per-litigation-stage basis, not on a per-prisoner basis. Indeed, the petitioner concedes that " 'the initial partial filing fee accrues in each case, regardless of the number of suits initiated,' " Pet. Br. 17—in other words, not on a per-prisoner basis.

The fact that the statute focuses on litigation stages is a simple point, but one worth emphasizing, because it shows that Congress affirmatively contemplated that a single prisoner would have to pay multiple filing fees at the same time (i.e., simultaneously) if he engaged in multiple filings: he would have to pay an *initial* partial fee for his *appeal* at the same time he was making *monthly* payments for his civil *action*. E.g., *Newlin* v. *Helman*, 123 F.3d 429, 436 (7th Cir. 1997), overruled in part on other grounds by *Lee*

v. *Clinton*, 209 F.3d 1025 (7th Cir. 2000), and *Walker* v. *O'Brien*, 216 F.3d 626 (7th Cir. 2000) ("Just as we concluded that the complaint and the appeal can produce two strikes in a single case, so we hold that the fees for filing the complaint and appeal cumulate.").

Consider, for example, how the statutory text applies to the paradigm case of a prisoner suit: a prisoner files a civil action, has it dismissed, and then appeals the dismissal. The prisoner files a complaint in a district court (say, the Western District of Michigan). Subsection (b)(1) directs "the court" to assess and "collect, as a partial payment of any court fees required by law, the initial partial filing fee." The immediately preceding section of the U.S. Code specifies *which* court is "the court" that must undertake that collection: "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding *in such court* to pay a filing fee." § 1914(a) (emphasis added). And § 1914 also reveals why Congress in § 1915(b)(1) might have referred to multiple "fees [plural] required by law" at this initial stage: § 1914(a) imposes a $350 filing fee, and § 1914(b) provides that "additional fees" may be "prescribed by the Judicial Conference of the United States." See § 1914 note (1995) (District Court Miscellaneous Fee Schedule) (setting fees, some of which may apply at filing). The commencement of the district-court action thus triggers an initial payment due to the Western District of Michigan. § 1915(b)(1).

As the suit progresses, the prisoner must make "monthly payments of 20 percent of the preceding month's income credited to [his] account."

§ 1915(b)(2). The monthly-payments provision in subsection (b)(2) also refers to the same court: it directs the agency with custody of the prisoner to forward monthly payments for the already incurred filing fee "to the clerk of the court"—i.e., in this hypothetical, the Western District of Michigan.

Now assume that the prisoner's action is dismissed after several months for failing to state a claim and that the prisoner appeals. See § 1915A (requiring screening of prisoner complaints); see also 141 Cong. Rec. S7526 ("Most prisoner lawsuits are meritless."); *Jones* v. *Bock*, 549 U.S. 199, 203 (2007) ("Most of these cases have no merit; many are frivolous."). Once the prisoner "files *an appeal* in forma pauperis," he must pay "an initial partial filing fee" for commencing that new litigation stage. § 1915(b)(1) (emphasis added). This appellate fee must also be paid to the same district court (in this hypothetical, the Western District of Michigan)—and it too consists of multiple court fees. § 1913 (appellate fees prescribed "by the Judicial Conference of the United States"); http://www.uscourts.gov/services-forms/fees/court-appeals-miscellaneous-fee-schedule (listing fees, including a $500 fee for filing a notice of appeal); § 1917 (a $5 fee upon filing a notice of appeal "shall be paid to the clerk of the district court").

The prisoner thus must make an *initial* payment of 20% of his average income or balance for the *appellate* filing, § 1915(b)(1), while at the same time he must simultaneously make a *monthly* payment of 20% of his income for his prior *district-court* filing, § 1915(b)(2). The paradigm case—where a prisoner files a civil action, has it dismissed, and then appeals

it—thus requires, under § 1915(b)'s plain language, that the prisoner simultaneously pay 40% of his income toward those two filing fees, not just 20%. And then the prisoner must make ongoing monthly payments "until the filing fees are paid," which by this point could include the fees set out in § 1914(a) and § 1914(b) for the district court and the fees set out in § 1913 and § 1917 for the appellate court. § 1915(b)(2). Applying the plain language to the paradigm case confirms that § 1915(b) as a whole takes a per-case (or, more precisely, a per-litigation-stage) approach, not a per-prisoner approach.

B. The petitioner's arguments about the text of § 1915(b)(2) do not justify a per-prisoner approach.

Against this, the petitioner contends that "Congress's use of the singular 'clerk of the court,' but the plural 'filing fees,' evinces that a single clerk's office is to receive monthly payments even when there are numerous 'filing fees' owed, which is consistent with the per-prisoner approach but not the per-case approach." Pet. Br. 12. But there is no inconsistency: multiple filing fees for a given litigation stage may be owed to a single court. The petitioner assumes there could only be one filing fee per case (and so a reference to multiple filing fees must refer to multiple cases), but that assumption is inconsistent with multiple filing fees imposed by § 1914(a) and (b) for one action and by § 1913 and § 1917 for one appeal. And the ordinary progression of a case through the trial and appellate stages also results in multiple "filing fees."

Consistent with the petitioner's preferred approach, the Fourth Circuit held "that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate's trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed*." *Torres* v. *O'Quinn*, 612 F.3d 237, 252 (4th Cir. 2010). This holding cannot be reconciled with the fact that § 1915(b)'s plain text instructs courts to withdraw twice that much (40%) from an inmate's trust account in the ordinary situation where the prisoner files an appeal before having paid off his district-court filing fee—that is, while he is still making monthly payments on that fee. Thus, while the Fourth Circuit concluded that "the twenty percent exaction applies to *all* court fees, in total," *id.*, its reasoning is inconsistent with the archetypical case, where initial payments of 20% would be taken for *both* the action and the appeal. And the reason for the Fourth Circuit's error is simple: it overlooks the fact that the phrase "a partial payment for any court fees required by law" refers to the court fees required *in the civil action or appeal at issue* in that particular court. Pet. App. 16a ("Subsection (b)(1)'s reference to 'any' court fees, however, must be read in context: when a prisoner 'brings a civil action or files an appeal,' he must pay an initial filing fee and monthly installments thereafter as payment of any (and all) court fees *required for that action or appeal*.").

The Second Circuit, in *Whitfield* v. *Scully*, 241 F.3d 264 (2d Cir. 2001), made the same error that the Fourth Circuit did. It asked whether collection should proceed in a simultaneous fashion (under the per-case or "per-encumbrance" approach) or in a sequential

fashion (under the per-prisoner approach). *Id.* at 276. While it conceded that subsection (b)(2)'s monthly payment requirement "could plausibly be read to require recoupment on a per-encumbrance basis," *id.*, it adopted a per-prisoner approach to avoid the fact that "the simultaneous collection of multiple encumbrances could potentially expose 100 percent of a prisoner's income to recoupment." *Id.* But the paradigm case shows that Congress expected simultaneous recoupment of multiple fees, because a monthly payment on a district-court fee will almost always overlap with an initial payment on an appellate fee.

The Fourth Circuit also premised its adoption of a per-prisoner approach on the assumption that Congress had not even *thought* about the problem of how to collect fees when prisoners incur multiple filing fees. *Torres* v. *O'Quinn*, 612 F.3d 237, 245 (4th Cir. 2010) ("[W]e are called upon to determine what Congress would have done had it thought about the problem."). That is a heroic assumption, and it is contradicted by the fact that (to use the petitioner's words) "the entire purpose of the PLRA is to provide rules for prisoners who file multiple lawsuits." Pet. Br. 18. In fact, Congress was so concerned about the problem of individual prisoners filing multiple lawsuits using *in forma pauperis* status that it imposed in the PLRA a three-strikes rule to limit the number of abusive actions or appeals that a prisoner could bring. § 1915(g); see also *Coleman*, 135 S. Ct. at 1762. The three-strikes rule, after all, takes effect only after a prisoner has filed multiple actions or appeals. § 1915(g) ("on 3 or more prior occasions").

Given that both the full fee and the initial partial payment both expressly apply on a per-litigation-stage basis, there is no reason to interpret the monthly payment as somehow being capped on a per-prisoner basis. Subsection (b)(2) continues the process begun in subsection (b)(1) and extends it. Indeed, if Congress intended to switch from what even the petitioner agrees is a per-stage approach in subsection (b)(1), Pet. Br. 17; see also *Siluk* v. *Merwin*, 783 F.3d 421, 427 (3d Cir. 2015) ("This subsection [(b)(1)] unambiguously applies to each action or appeal that a prisoner files, whether or not the prisoner has filed other suits that are pending."), then one would expect Congress to provide some clear instruction that it was shifting gears to apply a different approach in subsection (b)(2) for monthly payments from its approach for initial payments. But instead, subsection (b)(2) begins with a direct link to subsection (b)(1), see § 1915(b)(2) ("After payment of the initial partial filing fee "), uses the same percentage (20%) that (b)(1) does, and then sensibly automates the process of monthly garnishment by directing the agency with custody of the prisoner to ensure the payments are being made until all of the filling fees are paid. "Nothing in the statute suggests that a second or third action should be treated any differently than the first." Pet. App. 16a. Nothing, in short, signals any intent to shift from requiring the payment of filing fees incurred in each given case to imposing a 20% cap on all filing fees, regardless of how many filings the prisoner has made.

C. The statute as a whole applies on a per-litigation-stage basis.

The broader context of § 1915 confirms that a per-litigation-stage approach applies. The subject-matter of § 1915 is filing fees, and, at the risk of belaboring the obvious, filing fees do not apply on a per-prisoner basis, but rather to litigation stages.

Just last Term, this Court recognized that § 1915's repeated references to "actions" and "appeals" were intended to separate out the stages of litigation: "The *in forma pauperis* statute repeatedly treats trial and appellate stages of litigation as distinct." *Coleman*, 135 S. Ct. at 1763. This Court cited five provisions illustrating this distinction:

- (a)(2), which requires a prisoner to submit a certified trust-fund-account statement whenever "seeking to bring a civil action or appeal a judgment in a civil action" *in forma pauperis*—that is, *each* time he files, not just once in a litigation career;

- (a)(3), which provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith," again a provision that applies to a specific appeal;

- (b)(1), which requires a prisoner to pay the full amount of a filing fee if he "brings a civil action or files an appeal in forma pauperis," and which also calculates the initial partial payment based on the six-month period

"immediately preceding the filing of the complaint or notice of appeal";

- (e)(2), which directs courts to dismiss if "the action or appeal" is frivolous, malicious, fails to state a claim, or seeks monetary relief against an immune defendant; and

- (g), which, in the three-strikes rule, bars prisoners from "bring[ing] a civil action or appeal[ing] a judgment in a civil action" *in forma pauperis* if the prisoner has had three or more "action[s] or appeal[s]" dismissed as frivolous, as malicious, or for failing to state a claim.

The Court could have cited more provisions, including subsections (b)(3), (b)(4), and (c). In a statute where Congress has repeatedly established triggers that depend on events that occur at a specific litigation stage (i.e., dismissals, statements that there is no good-faith basis to appeal, and full payments of filing fees), it makes little sense to think it would deviate from that framework without clearly signaling that it wanted a different framework for monthly payments.

The Third Circuit in *Siluk* v. *Merwin*, 783 F.3d 421 (3d Cir. 2015), argued that § 1915(g)'s three-strikes rule is an example of a per-prisoner approach and that it "does not address each case individually." *Id.* at 429. According to the Third Circuit, "[c]learly, Congress there intended to review a prisoner's *overall* litigation history, not merely one case at a time." *Id.* But while the *consequence* of losing the privilege of pauper status applies to a specific prisoner, the

triggering event of a qualifying dismissal does occur one case at a time. Indeed, the question this Court resolved in *Coleman* was whether a district-court dismissal counted as a strike on a per-case basis (i.e., only after affirmed on appeal) or on a per-litigation-stage basis (i.e., immediately upon the district court's dismissal). 135 S. Ct. at 1763 (recognizing it is the latter).

II. Applying § 1915(b)'s plain text does not raise any constitutional problems.

The circuits that have adopted a per-prisoner approach have asserted that applying a per-stage approach would cause constitutional problems by limiting prisoners' rights of access to the courts. E.g., *Whitfield*, 241 F.3d at 277 (expressing the concern that a per-encumbrance approach "could pose a serious constitutional quandary as to whether an unreasonable burden had been placed on the prisoner's right of meaningful access to the courts, especially with respect to the collection of filing fees"). But no such constitutional issue would arise.

First, § 1915(b)(4) provides that a prisoner cannot be precluded from filing an action or an appeal "for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." None of the circuits that has adopted a per-prisoner approach has any response to this point. In fact, both the Second Circuit in *Whitfield* and the Fourth Circuit majority in *Torres* fail to even *mention* subsection (b)(4). See generally *Whitfield*, 241 F.3d 264; *Torres*, 612 F.3d 237; see also *Torres*, 612 F.3d at 258 (Niemeyer, J., dissenting) ("the statute expressly guards against any access problem in § 1915(b)(4)"). And the Third Circuit

in *Siluk* contradicts itself by invoking the need to avoid constitutional questions about the right of access to the courts *after it had already acknowledged* that Congress included § 1915(b)(4) "to safeguard a prisoner's constitutional right of access to the courts." 783 F.3d at 430–31.

The petitioner, acknowledging the existence of subsection (b)(4), takes a different tack. He argues that even if prisoners are allowed to file when they have no income, forcing them to choose between retaining some "discretionary income" and filing fewer actions would "impermissibly burden the exercise of a constitutional right." Pet. Br. 45–46. But that choice is put to average Americans every day: "Requiring prisoners to make economic decisions about filing lawsuits does not deny access to the courts; it merely places the indigent prisoner in a position similar to that faced by those whose basic costs of living are not paid by the state." *Roller* v. *Gunn*, 107 F.3d 227, 233 (4th Cir. 1997). As the Fourth Circuit explained in *Roller*, "[t]hose living outside of prisons cannot file a lawsuit every time they suffer a real or imagined slight[;] [i]nstead, they must weigh the importance of redress before resorting to the legal system." *Id.* And that weighing is just what Congress wanted the PLRA to encourage.

On a related note, the existence of subsection (b)(4) also refutes the petitioner's assertion that Congress did not "provide[] guidance as to what happens once the fifth filing fee is incurred." Pet. Br. 13. If a prisoner has already promised 100% of his income to paying off filing fees (or other debts), Congress provided that he can still file, § 1915(b)(4),

and that he will still have to add his sixth filing fee to his overall debt, § 1915(b)(1) ("the prisoner shall be required to pay the full amount of a filing fee").

Second, even without § 1915(b)(4)'s safety valve, requiring the payment of a partial filing fee would not violate the Constitution. "[The] reason is simple: there is no constitutional entitlement to subsidy." *Lewis* v. *Sullivan*, 279 F.3d 526, 528 (7th Cir. 2002) (noting that seven circuits have rejected constitutional objections to § 1915(g), which cuts off *in forma pauperis* access to courts, against challenges that included access challenges). Denying a prisoner *in forma pauperis* status, after all, "does not block a prisoner's access to the federal courts," but rather "only denies the prisoner the privilege of filing before he has acquired the necessary filing fee." *Abdul-Akbar* v. *McKelvie*, 239 F.3d 307, 314 (3d Cir. 2001) (en banc); see also *id.* at 316 ("The ability to proceed I.F.P is not a constitutional right. Congress granted the right to proceed I.F.P in 1892, and it has the power to limit this statutorily created right."); *White* v. *Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998) ("As the Eleventh Circuit observed, 'proceeding [*in forma pauperis*] in a civil case is a privilege, not a right—fundamental or otherwise.' ") (alteration in original).

To be sure, this Court has, in limited circumstances, held that an individual must be afforded pauper status. But as the Seventh Circuit has explained, "[t]he few proceedings in which civil litigants have been held entitled to a subsidy (via free counsel or waiver of fees) arise from prosecution-like proceedings, in which the public proposes to take away a person's children or impose other loss so great

that it amounts to deprivation of a fundamental right." *Lewis*, 279 F.3d at 529 (citing *M.L.B.* v. *S.L.J.*, 519 U.S. 102 (1996), and *Boddie* v. *Connecticut*, 401 U.S. 371 (1971)). That concern could be addressed in a future case involving an as-applied challenge brought by a litigant actually confronted by such a deprivation.

III. Requiring payments for each litigation stage furthers the PLRA's purpose of making prisoners bear some of the cost of their filings.

When Congress passed the PLRA, it was trying to address the problem that prisoners will " 'litigate at the drop of a hat,' simply because they have little to lose and everything to gain." 141 Cong. Rec. S7524 (May 25, 1995) (statement of Sen. Dole). It wanted to fix the problem that there was "no economic disincentive to going to court." *Id.* at S7525. As Judge Easterbrook explained when addressing the question presented, "[t]he PLRA is designed to require the prisoner to bear some marginal cost for each legal activity." *Newlin*, 123 F.3d at 436.

Requiring prisoners to bear some cost for each filing is important, because prisoner litigation imposes substantial costs on the States. "[A]ll [States] have both low- and high-level personnel who spend significant portions of their time dealing with inmate litigation": "There are lawyers and paralegals in corrections departments and in offices of attorneys general; there are litigation officers, compliance officers, risk assessment personnel, and others." Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1669 (2003). And prisoner litigation

imposes other costs: "systems that know they will be sued dozens or even hundreds of times each year develop practices that make responding to those lawsuits easier and more routine," such as "videoptap[ing] cell extractions." *Id.* at 1671.

Imposing fees on a per-litigation-stage approach serves the PLRA's goals better than imposing them only on a per-prisoner approach. As the Tenth Circuit put it, allowing "prisoners with one ongoing case to postpone all successive filing fee obligations" would "dilute[] if not defeat[]" the "overarching purpose of the statute," which is "to restrain runaway prison litigation with some pay-as-you-go constraint." *Christensen* v. *Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 830 (10th Cir. 2010). As the D.C. Circuit explained in its decision below, "[c]apping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action." Pet. App. 17a; see also *Torres*, 612 F.3d at 256 (Niemeyer, J., dissenting) ("This [per-prisoner approach] gives prisoners, in effect, a free ride after they file their first piece of litigation."); *Lefkowitz* v. *Citi-Equity Grp., Inc.*, 146 F.3d 609, 612 (8th Cir. 1998) ("Because the PLRA fee provisions were designed to require prisoners to bear financial responsibility for each action they take, the twenty-percent rule should be applied per case.").

IV. Applying a per-litigation-stage approach is administratively workable.

The petitioner also argues that the per-prisoner approach is preferable because a per-case approach would lead to situations where prisons must "send as

many as five checks for five different cases, possibly to five different courts." Pet. Br. 49. In these instances, he continues, the resources for "calculating, sending, receiving, and tracking five different payments" would not be worth the postage. *Id.* at 50.

But while tracking prisoner debts is complex (because prisoners may owe not just filing fees but also other debts such as child support and victim restitution), it can be handled in a manageable way. Michigan, for example, has developed a computer program that handles the calculation and tracking. See Mich. Dep't of Corrections, Policy Directive 04.02.107 ¶ E (discussing responsibilities "for ensuring that the Trust and Accounting Payroll System (TAPS) is maintained to allow for the accurate collection of funds from CFA prisoners pursuant to this policy and state and federal law"); see also Mich. Dep't of Corrections, Policy Directive 04.02.105 ("TAPS is designed to track activities as they relate to various prisoner accounts held in trust by the Department. It is a complete accounting system of prisoner funds, including credits, disbursements, and debts, with automatic collection from credits for debt collections."). Other States have similar tracking systems and well-developed processes for dealing with prisoner accounts and for properly prioritizing prisoner debts. E.g., Nev. Dep't of Corrections, Admin. Reg. 258, at 1 (July 9, 2015) (describing procedures to "provide for the receipt of all inmate funds, process deduction from inmate funds, and all other associated inmate banking services"); Ohio Admin. Code 5120-5-03 ("an individual account record shall be maintained for each inmate in an institution which reflects all receipts and disbursements of funds from each

account"); Kansas Dep't of Corrections, Internal Mgmt. Policy & Procedure 04-106A (addressing "procedures for the automated processing of offender fees"); 103 Mass. Code Regs. 405.07 ("All inmate funds in the possession of the Department of Correction shall be maintained on the Department of Correction's Inmate Management System Trust Fund Accounting Module."); 103 Mass. Code Regs. 405.18 (requiring entry of court-ordered payments into the Inmate Management System). And given that all parties agree both that initial partial payments must be made on a per-case basis and that each fee must ultimately be paid in full, the process of entering court orders and tracking payments must continue regardless of the outcome of this case.

As for the image of multiple checks being mailed that are not worth the postage it costs to send them, simple mechanisms avoid this concern. For example, corrections departments can include payments for multiple prisoners on a single check, with instructions allocating the funds to particular cases. Michigan, for example, processes checks by facility-level (i.e., the Alger Correctional Facility and the Ionia Correctional Facility address their particular prisoners), and the separate facilities transfer funds for roughly 10 to 20 prisoners on a given check (just as they would if they were applying a per-prisoner approach). In the end, the petitioner's account of the administrative difficulties that result from applying the plain text of the statute are overstated and well within the competence of the States to manage.

CONCLUSION

For these reasons, the Court should affirm the judgment of the D.C. Circuit.

Respectfully submitted,

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No. 14-844

In The

Supreme Court of the United States

ANTOINE BRUCE, *Petitioner*,

v.

CHARLES E. SAMUELS, JR., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF THE SOUTHERN POVERTY LAW CENTER, THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND THE HUMAN RIGHTS DEFENSE CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Southern Poverty Law Center ("SPLC") is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. SPLC's lawsuits have toppled institutional racism in the South, bankrupted some of the nation's most violent white supremacist groups, and won justice for exploited workers, abused prison inmates, disabled children, and other victims of discrimination.

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of approximately 10,000, with up to 40,000 affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, *amici* members, or counsel for *amici*, made a monetary contribution to its preparation or submission.

numerous briefs as *amicus curiae* each year, in the United States Supreme Court and other courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The Human Rights Defense Center ("HRDC") is a non-profit organization founded in 1990 that nationally advocates on behalf of those imprisoned in American detention facilities. The HRDC serves as an important source of news and legal research for prisoners' rights advocates, policy makers, academics, researchers, journalists, attorneys, and others involved in criminal justice-related issues. In support of this effort, HRDC publishes materials including Prison Legal News, a monthly publication with subscribers in all 50 states and internationally that provides a voice to prisoners, their families, and others affected by criminal justice policies.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b)(1), "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." The prisoner initially is required to pay a partial filing fee, and then required "to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account" until the fee is paid in full. *Id.* at § 1915(b)(2).

This case presents the question of the meaning of the 20-percent-of-monthly-income requirement when a prisoner files more than one lawsuit—a total of 20 percent of the prisoner's very modest monthly income (the "per prisoner" approach); or 20 percent for each lawsuit, which could lead to 40, 60, 80, or 100 percent of the prisoner's monthly income, depending on the number of lawsuits filed (the "per case" approach).

Amici respectfully submit that the "per prisoner" approach best reflects the intent of the PLRA and the careful balance that the statute strikes. The "per prisoner" approach likewise best comports with this country's deep tradition of allowing adequate opportunity for judicial redress, regardless of an individual's financial means or legal status.

ARGUMENT

Both the "per prisoner" approach and the "per case" approach require the prisoner to pay all of his or her filing fees. The issue in this case is the timing and amount of the required partial payments in meeting that obligation.

The "per prisoner" approach, in mandating that the prisoner pay a significant amount (20 percent) of his or her limited monthly income every month until the debt for the filing fees is discharged, requires a substantial ongoing financial contribution from the prisoner. At the same time, it avoids the imposition of an overwhelming burden that easily could inhibit the filing of colorable and meritorious claims.

The "per case" approach, in contrast, in compelling 20 percent of a prisoner's monthly income for *each* case filed by a prisoner (up to 100 percent of a prisoner's total income) would create an insuperable obstacle for incarcerated individuals seeking judicial redress, including individuals with colorable and meritorious claims that would be raised in multiple lawsuits.

Accordingly, *amici* respectfully highlight three points for this Court's consideration. *First*, an important background principle for Congress's adoption of the PLRA's fee-collection provision was this country's longstanding commitment to ensuring a reasonable opportunity for judicial access for all, including incarcerated individuals. *Second*, Congress sought a careful balance in the fee-collection provision, not the imposition of a potentially crushing burden that might block judicial access for legitimate claims. *Third*, the recent history of litigation by prisoners confirms that there are numerous important examples of meritorious prisoner lawsuits—the kinds of suits that might well be deterred or foreclosed if the "per case" approach is adopted.

I. CONGRESS ENACTED THE PLRA AGAINST THE BACKGROUND OF THIS COUNTRY'S TRADITION OF ACCESS TO THE COURTS AND THE OPPORTUNITY FOR JUDICIAL REDRESS

The principle that the opportunity to seek judicial redress should not be precluded based on financial resources is well-settled in American law. Judge Learned Hand's famous "commandment" that

"thou shalt not ration justice" is woven into the American fabric.[2] As long ago as Thomas Jefferson's first Inaugural Address in 1801, the newly inaugurated President emphasized that "[e]qual and exact justice to all men form[s] the bright constellation, which has gone before us."[3] As Judge Jack B. Weinstein has explained, "Accessibility to the courts and other adjudicatory institutions on roughly equal terms is essential to equality before law. Equal access to the judicial process is a sign of a just society."[4]

Federal legislation permitting in forma pauperis litigation reflects this cardinal commitment. More than a century ago, in 1892, Congress enacted the first federal in forma pauperis ("IFP") statute, "intend[ing] to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs." *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948) (internal quotation marks omitted). This Court, moreover, recently reaffirmed that, "[o]rdinarily, a federal litigant who is too poor to pay

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[2] The Honorable Learned Hand, Address at the 75th Anniversary of the Legal Aid Society of New York (Feb. 16, 1951).

[3] Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), http://www.loc.gov/exhibits/treasures/images/vc6796b.jpg.

[4] Jack B. Weinstein, *Adjudicative Justice in a Diverse Mass Society*, 8 J.L. & Pol'y 385, 388-89 (2000).

court fees may proceed in forma pauperis." *Coleman v. Tollefson*, 135 S. Ct. 1759, 1761 (2015).

This protection of the opportunity for judicial redress applies fully to incarcerated individuals. As Chief Justice Roberts explained for a unanimous Court, "Our legal system remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law." *Jones v. Bock*, 549 U.S. 199, 203 (2007). The Court repeatedly has emphasized the importance of ensuring that prisoners have access to judicial redress and that their right to bring claims is not barred by unwarranted obstacles. *See, e.g., Bounds v. Smith*, 430 U.S. 817, 824-25, 828 (1977) (holding that prisoners have the right to access courts to pursue relief for constitutional violations); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) (prisoners' rights of access to courts may not be denied); *Ex Parte Hull*, 312 U.S. 546 (1941) (holding that prisoners have a right of access to the courts free of the interference of unreasonable prison regulations). As the Court has stressed, "[t]here is no iron curtain drawn between the Constitution and the prisons of this country. [Prisoners] retain right of access to the courts." *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974).

Congress enacted the PLRA in 1996 against this background of a deep national commitment to preserving access to the courts for incarcerated individuals.

II. THE FEE-COLLECTION PROVISION OF THE PLRA REFLECTS A CAREFUL BALANCE

Faced with a substantial volume of prisoner lawsuits, Congress revisited the IFP statute with regard to prisoners in the PLRA. As this Court has explained, Congress sought a balanced approach. Congress wished both to curb frivolous litigation and to preserve access for colorable and meritorious claims. The goal was to ensure "that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones*, 549 U.S. at 203.

While the PLRA "changed the landscape of prisoner litigation," *Torres v. O'Quinn*, 612 F.3d 237, 241 (4th Cir. 2010), it refined but, importantly, did not eliminate IFP treatment for prisoners. Instead, as noted, with respect to fee collection, the PLRA instituted a general requirement that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The prisoner is required to pay an initial partial filing fee and then "monthly payments of 20 percent of the preceding month's income credited to the prisoner's account" until the fee is paid in full. *Id.* at § 1915(b)(2).[5]

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[5] With respect to the initial filing fee, the statutory provision provides that "[t]he court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of – (A) the average monthly deposits to the prisoner's *(cont'd)*

It is telling that Congress, even in enacting the restrictions of the PLRA, adhered to the well-established tradition of recognizing the fundamental importance of IFP for prisoners in the federal judicial system. It required a significant, but measured, monthly contribution from a prisoner earning an income—not 100 percent, not 50 percent, but 20 percent. On its face, this is an assiduous balance, not an onerous imposition that effectively renders even the prisoner's meager income illusory.[6]

In keeping with this balance, a proper understanding of the fee-collection provision caps the prisoner's monthly obligation at 20 percent of the prisoner's monthly income regardless of the number of cases for which the prisoner owes such fees. Again, it is significant that the prisoner remains obligated to pay all of the filing fees for all of his or her cases; the issue is whether that payment is accelerated by requiring 40 percent, or 60 percent, or 80 percent, or 100 percent, of the prisoner's scant monthly income if he or she files more than one lawsuit. Only a "per prisoner" reading, maintaining the monthly obligation at 20 percent of monthly

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account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." 28 U.S.C. § 1915 (b)(1).

[6] Earnings for federal prisoners range from a starting point of only $0.23 per hour to a maximum of $1.15 per hour. *See* Fed. Bureau of Prisons, Progr. Stmt. 8120.02 – Work Programs for Inmates – FPI § 345.51 at ch. 5, p. 1 (July 15, 1999), http://www.bop.gov/policy/progstat/8120_002.pdf.

income, is consistent with the careful balance struck by Congress.

Particularly against the backdrop of our national commitment to judicial access for all, including prisoners, it is clear that Congress did not intend the PLRA to operate as a roadblock that would deprive IFP prisoners of access to the courts for colorable and meritorious litigation. Instead, the legislative history shows that, even when legislators were eager to end what they viewed as frivolous lawsuits, they did not intend to prevent prisoners from filing potentially legitimate claims. *See, e.g.*, 141 Cong. Rec. S14,627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch) ("I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.").

In enacting the PLRA, Congress "placed a series of controls on prisoner suits, constraints designed to prevent sportive filings in federal court." *Skinner v. Switzer*, 562 U.S. 521, 535 (2011). It did not seek a total ban on prisoners' IFP filings. *See, e.g.*, *Jones*, 549 U.S. at 204 (explaining that, through the PLRA, "Congress enacted a variety of reforms designed to filter out the bad claims and facilitate consideration of the good").

With respect to the fee-collection provision in particular, the fee obligations—a requirement to pay the entirety of the fee and an obligation to pay up to one-fifth of the prisoner's monthly income—was meant to deter frivolous litigation, but not to preclude prisoners from proceeding with potentially meritorious claims. *See, e.g.*, 141 Cong. Rec. S7526

(daily ed. May 25, 1995) (statement of Sen. Kyl) ("The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively."); *id.* ("The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings."). Indeed, as one legislator declared, "If [a prisoner] ha[s] a meritorious lawsuit, of course they should be able to file." 141 Cong. Rec. S14,628 (daily ed. Sept. 29, 1995) (statement of Sen. Reid). Such statements are consistent with a "per prisoner" approach, which strikes a balance between allowing a prisoner access to courts and requiring that prisoner to undertake financial obligations in seeking to file lawsuits. They are inconsistent, however, with a "per case" approach that would, on a monthly basis, impose a multiple (or multiples) of twenty percent of income on prisoners with extremely limited resources.

As this Court has explained regarding the PLRA, "[c]ourts should presume that Congress was sensitive to the real-world problems faced by those who would remedy constitutional violations in the prisons and that Congress did not leave prisoners without a remedy for violations of their constitutional rights." *Brown v. Plata*, 131 S. Ct. 1910 (2011). Such a presumption is not consistent with an adoption of the "per case" approach requirement of overwhelming payments.

The "per case" approach turns the PLRA fee structure on its head with prisoners forced to choose between retaining meager income or pursuing relief for violations of constitutional rights or other wrongs. Such a reading is inconsistent with Congress's

balanced approach—preserving IFP status for prisoners and carefully imposing both an obligation for the total amount of filing fees and a limited-percentage partial monthly contribution. Only the "per prisoner" approach faithfully reflects and implements that balance.

III. THE "PER CASE" APPROACH THREATENS TO DETER MERITORIOUS LAWSUITS

Complaints filed by prisoner-litigants have promoted the amelioration of legal violations and serious abuse within prison walls. *See, e.g., Plata*, 131 S. Ct. at 1947 (upholding a meaningful reduction in prison population in overcrowded prisons found to have been in violation of the Eighth Amendment). Indeed, the United States Department of Justice recognizes that prisoner lawsuits may well demonstrate "credible allegations of civil rights[] violations."[7]

The important role that prisoner lawsuits have played, and continue to play, in remedying legal violations, either through adjudication or through change-implementing settlements, can be seen in at least three areas: (1) solitary confinement and conditions of confinement; (2) religious freedom; and (3) the Fourth Amendment.

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[7] BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, CHALLENGING THE CONDITIONS OF PRISONS AND JAILS: A REPORT ON SECTION 1983 LITIGATION 39 (1994).

Solitary confinement and conditions of confinement: This Court has long recognized that solitary confinement provokes, even for prisoners sentenced to death, "a further terror and peculiar mark of infamy." *In re Medley*, 134 U.S. 160, 170 (1890). The practice, however, is not uncommon, with estimates of 25,000 inmates in this country serving sentences in whole or in substantial part in solitary confinement. *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015) (Kennedy, J., concurring).

While the issue of solitary confinement continues to present profound legal issues, prisoner litigation has raised important challenges to this practice and resulted in substantial changes. For example, pro se inmates in New York brought a § 1983 challenge regarding allegations of unconstitutional and arbitrary conditions and punishments in connection with respective 1,095-day, 730-day, and 1,095-day periods of solitary confinement in prison Special Housing Units. Third Am. Compl. at ¶ 7, Peoples v. Fischer, No. 1:11-cv-02694-SAS (S.D.N.Y. Mar. 6, 2013), ECF No. 93.

In a settlement with the government, the prisoners were successful in bringing about reform of New York's solitary confinement procedures, including a presumption against this practice for pregnant prisoners, and alternative procedures for prisoners under the age of 18 or with significant intellectual disabilities. *See* Stipulation For A Stay With Conditions, Peoples v. Fischer, No. 1:11-cv-02694-SAS (S.D.N.Y. Feb. 19, 2014), ECF No. 124.

Examples of meritorious prisoner litigation regarding abuses in other conditions of confinement

also are readily available. *See, e.g., Hogan v. Fischer*, 738 F.3d 509, 512 (2d Cir. 2013); Stipulation and Order of Settlement, Hogan v. Fischer, 6:09-CV-06225 (W.D.N.Y. Sept. 12, 2014), ECF No. 118 (settlement resolving pro se prisoner Eighth Amendment claims of correctional officers spraying prisoner-litigant in his cell with mixture of fecal matter, vinegar, and machine oil); *Colon v. Howard*, 215 F.3d 227 (2d Cir. 2000) (confinement of pro se prisoner-litigant in Special Housing Unit for 305 days required procedural due process protections).

Religious freedom: The preservation of religious freedom also has featured prominently in meritorious prisoner litigation. In one example, the government violated the Free Exercise Clause by requiring inmates to provide physical indicia of Islamic faith to receive accommodations for Ramadan observance. *Wall v. Wade*, 741 F.3d 492, 499-500 (4th Cir. 2014). As a result of this policy, the prisoner had been "absolutely precluded from observing Ramadan because of the defendants' actions," and was eventually faced with starvation or violating his religious beliefs. *Id.* at 501-02. In considering this claim—initially brought pro se—the court held that the fact that a prisoner does not have, for example, a prayer rug is insufficient to determine whether he is a practicing Muslim. *Id.* at 500.

Without the opportunity for meritorious prisoner litigation, constitutional violations regarding religious practice and observance would persist. *See, e.g., Rich v. Sec'y, Florida Dep't of Corr.*, 716 F.3d 525 (11th Cir. 2013) (reversing summary judgment against prisoner-litigant, who initially filed pro se, regarding government failure to provide

kosher diet); *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001) (holding, in pro se prisoner litigation, that prison officials' refusal to consider prisoner's request for Native American religious items because he was not of Native American heritage violated the Equal Protection Clause).

Fourth Amendment: Egregious violations of the Fourth Amendment by prison employees also have been exposed and resolved through the efforts of prisoner-litigants. For example, plaintiff Debra Baggett represented a class of 178 female inmates videotaped by male correctional officers while subjected to strip searches. *Baggett v. Ashe*, 41 F. Supp. 3d 113 (D. Mass. 2014). Among other practices in the videotapes, prisoners were required to strip and manipulate their bodies, including lifting their breasts and spreading their legs. *Id.* at 120-21. The court found that these searches "clearly transgressed the Constitution and injured the plaintiff class." *Id.* at 127. Other examples of meritorious prisoner litigation enforcing important Fourth Amendment rights also are readily available. *See, e.g., Sanchez v. Pereira-Castillo*, 590 F.3d 31 (1st Cir. 2009) (exploratory surgery of prisoner-litigant's abdomen was an unreasonable, unconstitutional search under the Fourth Amendment where less intrusive testing could have sufficed).

These examples of meritorious prisoner lawsuits highlight the importance of preserving a reasonable, practical opportunity for judicial redress while interpreting and enforcing the PLRA. Under a "per case" approach, in which a prisoner's colorable lawsuits would expose the prisoner to substantial

multiples of his or her very limited monthly income for filing more than one lawsuit, meritorious lawsuits challenging solitary confinement and conditions of confinement, protecting religious freedom, enforcing the Fourth Amendment, and raising other fundamental claims likely would be chilled and deterred. Without this important prisoner litigation regarding these issues, the mistreatment of prisoners and the violations of constitutional law and human dignity might well proceed unchecked and unabated.

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the "per prisoner" approach best aligns with this country's tradition of adequate opportunity for judicial redress, and best reflects the intent of the PLRA and the careful balance that the statute strikes.

Respectfully submitted,

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